No. 011664 MAY 10 2002

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In The

Supreme Court of the United States

MARY DOE, a human embryo "born" in the United States (and subsequently frozen in which state of cryopreservaton her life is presently suspended) individually and on behalf of all other frozen human embryos similarly situated;
THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF PREBORN CHILDREN,
Petitioners,

v.

DONNA E. SHALALA, in her official capacity as Secretary of Health and Human Services;
U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES;
HAROLD VARMUS, in his official capacity as Director of the National Institutes of Health;
NATIONAL INSTITUTES OF HEALTH,
Respondents.

NATIONAL ORGANIZATION FOR EMBRYONIC LAW,
Amicus Curiae.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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274 pg
F/O

QUESTIONS PRESENTED FOR REVIEW

1. Since Mary Doe (as a human embryo)is a 'being', and being 'human', therefore, a 'human being', does she not enjoy the equal protection of the law under the Constitution and have standing to protest her own destruction at the hands of the Federal Government seeking to conduct human embryo (stem cell) experimentation upon her?

2. Did the District Court judge err in refusing to grant an injunction to protect Mary Doe from harm at the hands of the Federal Government and did he further err in acting outside the rules of Federal procedure by 'administratively closing' her case without the consent and over the objection of her counsel?

3. Did the Fourth Circuit Court of Appeals err in dismissing Mary Doe's appeal as 'interlocutory', citing as authority for its dismissal, 28 U.S.C. § 1292, when subsection(a)(1) of this same rule provides for the propriety of an appeal, even if deemed 'interlocutory', when the District Court judge has refused to grant an injunction?

4. Did the lower Federal Court judge exceed his authority by 'administratively closing' Mary Doe's case?

5. Does Mary Doe possess 'standing' under the Constitution to protest her own destruction at the hands of the Federal Government and to seek an injunction by this Court estopping the further expenditure of Federal monies for human embryo (stem cell) experimentation and cloning of human embryos for experimentation until such time as the essential question can be resolved: **"IS THE HUMAN EMBRYO MAN OR PROPERTY?"**

LIST OF PARTIES

All parties to this proceeding appear in the caption of the case, and no parent corporations or subsidiaries exist in this litigation.

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Lincoln's Greatest Speech: The Second Inaugural
(Simon and Shuster, 2002) 10, 13

The Baltimore Sun,
Sunday April 28, 2002 page 21A 26

OPINIONS BELOW

There was no opinion issued by the United States District Court for the District of Maryland, however, the order 'administratively closing' the case is included in the Appendix ("App." 8). The opinion of the Fourth Circuit Court of Appeals was issued on February 7, 2002 and is unofficially reported. (App. 2)

STATEMENT OF JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1254(1). In an opinion issued February 7, 2002, the Fourth Circuit Court of Appeals found that the order in the District Court for the District of Maryland, which 'administratively' closed the case, was not appealable as interlocutory, citing 28 U.S.C. § 1292, but in doing so failed to take cognizance of § (a)(1) of this same rule, which provides for interlocutory appeals of refusal by a District Court judge to grant an injunction. The Fourth Circuit dismissed the appeal without oral argument despite the fact that counsel for Plaintiff/Appellant had filed for temporary injunction in the lower court, which request for injunction was denied by the District Court judge. The final disposition of this case was the Fourth Circuit's Order denying Petitioners' Petition for Rehearing, issued on April 9, 2002, only one day before President Bush's plea for a ban on human cloning. This Petition for a Writ of Certiorari is filed within ninety days of that date.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The PREAMBLE **TO THE UNITED STATES CONSTITUTION** states as follows:

> "We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our **Posterity**,

do ordain and establish this Constitution for the United States of America." (emphasis of the word 'posterity' supplied)

Webster's Dictionary, in use at the time of the passage of the Fourteenth Amendment, entitled An American Dictionary of the English Language by Noah Webster, LL.D. revised and enlarged, published by George and Charles Merriam, Springfield, Massachusetts, 1857----photographic reproduction of title page and definition page filed with original bill of complaint and carried forward as part of the printed record in the Fourth Circuit, defines 'posterity' as:

> **POS-TER-I-TY**, n. [Fr. *posterté*; L. *posteritas*, from *posterus*, from *post*, after]
>
> 1. Descendants; children, children's children, &c., indefinitely; the race that proceeds from a progenitor. The whole human race are the *posterity* of Adam.
>
> 2. In a *general sense*, succeeding generations; opposed to **Ancestors**.

Amendment XIII to the Constitution of the United States, provides in pertinent part as follows:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

(It is respectfully proffered that NIH cannot experiment upon very tiny human beings without 'reinventing slavery'.)

Amendment XIV to the Constitution of the United States, states in pertinent part as follows:

> All persons **born** or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any

person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (emphasis on the word 'born' supplied)

Webster's Dictionary of 1857 defines 'born' as follows:

BORN, (baurn) pp of BEAR. brought forth, as an animal. A very useful distinction is observed by good authors, who, in the sense of produced or brought forth, write this word *born*: but, in the sense of *carried*, write it *borne*. This difference of orthography renders obvious the difference of pronunciation.

1. *To be born*, is to be produced or brought into life. "Man is born to trouble". "A man is born a prince or a beggar", of before the mother or the ancestors. "Man that is born of woman is of few days and full of trouble.---Job XIV

2. *To be born, or born again*, is to be regenerated or renewed; to receive spiritual life. John iii

Mary Doe (as a human embryo) is surely "produced or brought into life", in consonance with Webster's definition of **born** in his 1857 dictionary, which surely would have been available at the hand of those writing the Fourteenth Amendment, which was finally ratified eleven years later in 1868, following the Civil War. Just because she is tiny, does not make her any less human. And her tiny life, in the hands of those wishing to buy and sell her for experimentation is surely "of few days and full of trouble.

28 U.S.C. § 1292(a)(1)(1994) states as follows:

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

> (1) Interlocutory orders of the district courts of the United States . . . , or of the judges thereof, granting, continuing, modifying, **refusing** or dissolving injunctions, or refusing to dissolve or modify **injunctions**, except where a direct review may be had in the Supreme Court. (emphasis applied)

STATEMENT OF THE CASE

A. Statement of Facts

The issue presented to this Court for review involves the equal humanity and personhood of Mary Doe and her right to standing to protest her own destruction at the hands of the Federal government and request and receive a temporary injunction preventing same.

Mary Doe's case was brought before Judge Messitte in the United States District Court, sitting at Greenbelt, Maryland and his decision on the matter of her personhood was to 'decide not to decide', meaning that he placed her case in 'administrative closure' (unknown to the Federal Rules of Civil Procedure) and refused to grant an injunction to protect her, removing her from the docket, and attempted to hinder her ability to appeal the matter to a higher court by the use of 'administrative closure' instead of outright dismissal of her claim.

The Court of Appeals for the Fourth Circuit validated the lower court judge's attempt to deny Mary Doe's equal humanity by dismissing her appeal without a hearing on the issues, finding her appeal to be interlocutory, when the identical rule cited by the Court in dismissing her appeal (28 U.S.C. § 1292) provides for appeal of interlocutory matters when there has been a refusal by a District Court judge to grant an injunction.

Mary Doe and all those frozen human embryos similarly situated have been reduced to 'commodities' to be 'bought' and 'sold' in the market of human embryo experimentation (stem-cell research).

[President Bush's attempted distinction of allowing the use of stem cells taken from human embryos killed prior to his Address to the Nation of August 9, 2001 ('pre'-August 9 stem cells) and at the same time forbidding the killing of human embryos to obtain their stem cells after August 9, 2001 (post-August 9 stem cells) **is a distinction without a difference.** Under the microscope, there is no way to tell the difference between a 'pre-August 9' and a 'post-August 9' stem cell, and those selling them know this. President Bush has only 'the word' of the record-keepers at the private labs selling and shipping out these stem cells for research as to whether they are pre-August 9, 2001 stem cells or post-August 9, 2001 stem cells. Given the press of the private research facilities throughout the nation wishing to receive viable, healthy stem cells for experimentation, (and the President's order was criticized by those wishing to conduct human embryo experimentation, saying that the stem cells holding the most promise in their experiments would be ones freshly extracted from living human embryos and not 'stem cell lines' taken from human embryos prior to August 9, 2001)--- given the tens of millions of dollars being allocated in research grants by NIH to private labs and the press of those private labs to each receive their own 'legal' stem cells for their research programs under the President's directive, in this age of 'Enron record keeping' human nature dictates that the 'records' are only as good as the 'record keepers'.]

The current Secretary of Health and Human Services, Tommy Thompson, in pressing to open the 'Pandora's Box' of human embryo (stem cell) research, has brought a world of trouble upon his President, who is now left to fight the Senate with one hand tied behind his back.

By making Mary Doe and her frozen brothers and sisters commodities, the National Institutes of Health has 'reinvented' slavery in violation of the Thirteenth Amendment to the Constitution of the United States.

Human embryos can be compacted and 'concentrated'-stored by the hundreds, by the thousands, in a 'concentration can' of liquid nitrogen. (It is of note that the 'concentration can' is borrowed from animal husbandry, shaped like the farmer's milk can of the past and used in in vitro fertilization of cattle; now used for human in vitro fertilization and the storage of newly conceived/fertilized human embryos). In the very cool liquid nitrogen, life for cattle or human embryos is slowed down and brought to a standstill.

The 'concentration can' is a device that has been invented to terribly 'slow down life' whereas the 'concentration camp' is a device invented to terribly 'speed up death'. In either case, the wall imprisons **innocents.** It is curious to note that human life is first denigrated before human beings are killed or experimented upon.

Curiously, sixty years ago, human beings were transported to their death in railroad cars, borrowed from animal husbandry. Today, in 'concentration cans', borrowed from animal husbandry, very tiny human beings are again transported to their death.

In both cases, human life was then and is now being denigrated—transported like 'cattle' in containers for 'cattle', and then looked upon as 'cattle' by those who would treat their fellow human beings as 'cattle'---to be experimented upon and killed.

The World Dean of Geneticists, Dr. Jerome Lejeune, put it this way:

"But what about frozen embryos? They are accumulated by thousands in a crowded deep freeze tank. The low temperature brings time to a stand still! How is it called in history, this hopelessness of arrested people, concentrated in a hostile place where even the time was also arrested? Do you remember some half a century ago?

Today, people are questioning what to do with frozen embryos. Kill them? Or keep them for experimental benefit? These same questions were asked fifty years ago.

The only answer is very simple. Concentration camps must be forever strictly verboten."

B. Judgments Below

The judge in the District Court 'administratively closed' the case to clear the matter from the active docket.

The Court of Appeals for the Fourth Circuit ruled that the 'administrative closing' of Mary Doe's case is not appealable; that it is an interlocutory appeal, citing 28 U.S.C. § 1292. Section (1)(a) of this same rule, however, provides for interlocutory appeals when the District Court has refused to grant an injunction.

REASONS FOR GRANTING THE WRIT

I. A matter deemed otherwise 'interlocutory' by the Court is nevertheless appealable under 28 U.S.C. § 1292 (a)(1) which provides for interlocutory appeal of a refusal by a District Court judge to grant an injunction

The original Bill of Complaint sought an injunction in the first paragraph thereof and a more particularized request for an injunction was docketed in the case on September 22, 2000, following the release on August 23 of that year of the "guidelines for research using human pluripotent stem cells" (the necessary and last step before beginning the Federal funding of same).

Only two hearings were allowed by the Court, the first on February 28, 2000 and the second a year later on February 26, 2001.

Following the first hearing, a formal pleading requesting an injunction was filed September 22, 2000 to prevent the implementation of the "guidelines for research using human pluripotent stem cells, issued on August 23, 2000 (a copy of which was included at page 291 of the Appellant's Brief and the record extract).

The lower District Court judge took no action on the Request for Injunction and allowed it to lay in court an additional five months before finally ruling on it in open court with these words:

"**THE COURT: I am not going to grant an injunction now, Mr. Palmer, and that's my decision.**" Transcript of February 26, 2001 p. 130.

The purpose of the hearing February 26, 2001 was to rule on two motions: Plaintiffs' Request for Injunction and Defendants' Motion for Summary Judgment, as evidenced by memorandum of lower court dated November 2, 2000, which stated in pertinent part: "The hearing set for December 7, 2000 at 10:00 a.m. will include both the Request for Injunction and the pending Motion for Summary Judgment."

The date of December 7, 2000, would ordinarily have been one month after the date of the Presidential election. Two days following the contested Presidential election the court, of its own motion, continued the hearing on the Request for Injunction and Motion for Summary Judgment, setting it in for February 5, 2001. The hearing was subsequently rescheduled, again at the court's own motion, and was finally set in for February 26, 2001.

Thus the record is replete with references to Plaintiff's requests for injunction and an examination of the record would have disclosed that the request for injunction was denied by the District Court, causing the matter to be one clearly for appellate review in the Fourth Circuit Court of Appeals under 28 U.S.C. § 1292 (a)(1)(1994).

II. When the Justice Department under the Clinton Administration cites the 29-year old case of *Roe v. Wade* as authority for the proposition that Mary Doe, as a human embryo (separate and apart from the mother) has no rights under the Constitution to protest her own destruction at the hands of the Federal Government or request an injunction against same, the time has assuredly come to address the 'Constitutional standing' of Mary Doe (as a human embryo) who is able to exist by "natural or artificial means outside of the womb." (in vitro fertilization and deep-freeze cryo-preservation)

It is with the greatest respect for the venerable institution of the United States Supreme Court that this prayer for hearing on behalf of Mary Doe, the most innocent of human life is brought.

As this is written on April 19, 2002 the issue of the equal humanity of the human embryo and the need for law forbidding experiments upon and cloning of the youngest of our kin is dividing the United States Senate. Wisdom and guidance is needed. Are the smallest of our kin an equal member of the community of Man enjoying, separate and apart from the mother's body, the equal protections of the law under the Constitution or are human embryos to be viewed as modern-day 'Dred Scots'---merely our slaves to do with as we will, with adult technicians the 'modern-day slave masters'? Mary Doe, as a humble supplicant, implores of this venerable body the right to recognition under our Nation's Constitution that has drawn its strength and homage in the eyes of the world by causing its protections to rest upon the weak as well as the strong, blind to age, size, color or social standing.

Unlike a case that presents a question to the Court of balancing the right of the Preborn child with the wishes ('choice') and rights of the mother, the mother is entirely removed from the equation in the instance of conceiving human beings (human embryos) by bringing together the female egg and the male sperm in a Petri dish (in vitro

fertilization). The resultant human embryo proves her viability by virtue of the fact that she can be shipped by overnight express and implanted in the womb of another woman anywhere in the world (human embryo adoption). (App. 122) Mary Doe is a living human being, separate and apart from her (genetic) mother's body. The body of Mary Doe is at the same time coveted by the technicians for human embryo experimentation. Those desiring to experiment upon her choose to give her a new name: 'pre-embryo'.

And yet everything necessary to build Mary Doe is present, sufficient and complete from the very beginning (the moment of conception/fertilization). Nothing is added. Everything necessary to build the human brain, capable of going to the moon and putting foot upon the moon, is locked in at the moment of fertilization. Such a realization is too wonderful for man. It is high; he cannot attain unto it. Science now proves to man the truth of his being from the very beginning - as a newly conceived (fertilized) human being---Mary Doe (and all of us as human embryos---our smallest 'baby picture') are fearfully and wonderfully made.

Dr. Jerome Lejeune puts it this way:

> "What we know, beyond any possible doubt, is that all the necessary and sufficient information is present from fecundation, (fertilization) that is, from the moment that the information carried by the spermatozoid and that carried by the ovule are joined in the fertilized egg.
>
> This idea that spirit animates matter is, in a way, inscribed in our very language. We use the same word for an idea that comes to mind and a new being coming into existence. In both cases, we speak of conception. That is not a poverty of our vocabulary, but implicit recognition, if I may put it so, that at the very beginning, soul and body, spirit and matter, are so interlocked that it is impossible to speak of one without the other and language never

has."---Dr. Jerome Lejeune, "Is There a Natural Morality?" App. 52. (This same paper was attached to Plaintiff's original bill of Complaint and carried forward with the record to the Fourth Circuit)

Mary Doe is truly the '**Posterity**' of her ancestors and our ancestors, spoken of by the Founding Fathers.

What says mankind of Mary Doe, who proves her viability (this Court's own standard of 'able to exist by natural or artificial means outside of the womb'), who can be frozen for months or years in a state of suspended animation where time stands still? Surely, in the bright light of the modern science of in vitro fertilization (of which the Court may take judicial notice) the Court itself does not remain in a state of suspended animation in which time for it stands still.

If a lower court judge had opined in 1899 that as our great-grandmother said: "If God had meant for man to fly, He would have given him wings" that same judge would have been hard-pressed to stand by his statement when the Wright Brothers took their bicycle business from the ground to the sky.

The judge would have to eat his words, as the great-grandchildren of that judge eat a meal today at 36,000 feet on their way to visit their ancestral home.

Knowledge is cumulative; wisdom is not. Therein lies the difficulty. How can Man be truly wise, and where does Man find the touchstone of wisdom?

At this writing, the great state of Kansas (heart of the nation's breadbasket) has understood the wisdom that Man does not live by bread alone, but by every word that proceeds out of the mouth of Him in Whom the back of our Nation's money says WE TRUST. The Kansas legislature has voted to direct the Kansas Supreme Court to rule that human life begins at conception.

But upon whose authority have they asked their state Supreme Court to so rule? Is it upon a greater or lesser authority than the Court over their state Supreme Court?

Are they not appealing to the Supreme Judge of the World for the rectitude of their grievances? Are they not answering the dictates of the 'Law above the law' written upon the human heart and asking their state court to conform their state law with the law of Him in Whom they repose their trust in life and hope for the life hereafter?

Is this not state power, in consonance with the Ninth Amendment, taking precedence over Federal power?

Assuming, arguendo, that the 'tares' sown in the human heart have so hardened a majority of the hearts of the judges presently on the Court against wiping the slate clean of *Roe*, does not this Court have a duty to the memory of the great Justices of the past to not cling to the *Ship Titanic/Roe* to the extent that it refuses to board the lifeboat of 'Mary Doe' to row to safe waters, preserving the venerable respect due the Court in the hearts and minds of the people?

It was wisely pointed out by a senator in the debates on Senate bill 1899 that the senators were initially lining up along Celebrate Life/Pro-Choice lines—when this was a different issue—an issue dealing with treating human beings as commodities to be created for experiments (in violation of the Nuremberg Code agreed upon by all civilized societies at the end of World War II) and growing embryos for experiments (which also cannot be done without reinventing slavery).

At the time leading up to the U.S. Civil War, the nation was divided over the equal humanity and personhood of the black man. Today, a century and a half later our nation (indeed even our High Court) is again divided—this time over the equal humanity and personhood of all men as human embryos—red and yellow, black and white, and where to search for wisdom to light our path.

The words of Lincoln's Second Inaugural etched in marble on the north wall of the Lincoln Memorial, could just as easily have been written for our own day and time:

"...Fondly do we hope---fervently do we pray--- that this mighty scourge of war may speedily pass away. Yet if it continue... until every drop of blood drawn with the lash shall be paid by another drawn with the sword then as was said three thousand years ago, so still it must be said 'the judgments of the Lord are true and righteous altogether'" Abraham Lincoln, Second Inaugural Address

To Lincoln, "the sword of military battle was the judgment of God" according to Ronald C. White, Jr., author of Lincoln's Greatest Speech: The Second Inaugural (Simon and Shuster, 2002, page 158). Mr. White continues: "Lincoln's confidence in 'the judgments of the Lord' was drawn from the 19th Psalm. This was the fourth and final Biblical passage he quoted." "The judgments of the Lord, are true and righteous altogether.' {Psalm 19:9}"---Ronald C. White, Jr., Lincoln's Greatest Speech: The Second Inaugural

Lincoln was speaking of the beatings of the slave master's whip, and death at the tip of the whip or in irons on the slave ships, being brought over as human commodity cargo. And he saw the war as continuing until "every drop of blood drawn with the lash is paid in kind with another drawn with the sword."

We are told that the *Ship Titanic/Roe v. Wade* has in its upended state already carried to a watery grave some 40 million Preborn children and counting.

Before *Ship Titanic/Roe* slips completely beneath the surface, will we allow it to take to a watery grave countless numbers of innocent human beings (human embryos) while the Court remains devilishly divided over whether they are 'potential life' or 'LIVES WITH POTENTIAL'?

As an American tourist from Kansas stands in the Lincoln Memorial this summer and reads these words of Lincoln, he will reflect that our current President has said we are again at war (against terrorism) but have we as a nation, he may ask himself, allowed ourselves to be 'terrorists' to Preborn children (40 million)?

And if so, as he reads further the words of Lincoln, he will ponder what 'sword' could possibly avenge such a number of 40 million---and then the chilling thought of the 'nuclear sword' will come to him and the remembrance of a movie he has seen in the summer cinemas: "The Sum of all Fears" in which foreign terrorists get their hands on a nuclear bomb and smuggle it into the U.S. in a shipping container, detonating it against a major U.S. city. The movie is only fiction. The possibility of it being a preview of future terrorist evil very real.

The tourist returns to Kansas, resolute that his state Supreme Court stand with the One who has never lost a battle and Who's Providential hand has so nurtured and protected America until the alarm clock sounded at the Twin Towers on September 11, 2001.

When President Ronald Reagan was sworn in for his second term of office, he wanted everyone to know that his mother's Bible, upon which he would place his hand, would be open to II Chronicles 7:14 which he thought was the message to America at that time (and now).

Which is the greatest protector against foreign terrorists--the knowledge of the CIA or the OMNISCIENCE of the One on the back of our money; the power of our nation's military might or the OMNIPOTENCE of the One on the back of our money? In whom do we most wisely and truly trust? The answer is on the back of our money with which we will pay for our next meal, sustaining us for yet another day in this life that we increasingly see as but a 'school for the soul' of a heaven to be.

And do not even kings and courts learn that they do not 'hand down morality' but rather 'receive it from on High' like everyone else? Kansas is leading the way, and located as they are in the center of the nation, most likely, will be exempt from a choice of location for an evil terrorist act.

But the center of political power of our East Coast is extremely vulnerable.

We pray that our nation will be spared a reenactment of the summer movie, "The Sum of all Fears". God has the power to answer that prayer. In whose power lies the protection of the human embryo from commodification, experimentation, and sure destruction?

They are right now enslaved as 'human commodity cargo' in frozen concentration cans awaiting either human embryo **adoption** and an opportunity to fulfill their destiny, or human **experimentation,** and an opportunity in their death to benefit the life of another living human being, not themselves. Which do we choose this summer? America has set before her the way of Life and the way of Death. May we choose Life, that we may have it more abundantly.

A lifeboat is lowered down from the side of the *Ship Titanic/Roe*. Mary Doe requests permission to board. Is permission granted (CERT)? Will there be enough judges on her side to enter the lifeboat with her, man the oars, and row her to safety? Oral argument and reflection by this venerable body will tell.

The lights of *Titanic/Roe* emblazen forth, as though she lives and will somehow aright herself without the need for President Reagan's choice of wisdom (II Chronicles 7:14).

But the fate of *Titanic/Roe*, left to its own wisdom is sealed. It has struck the iceberg of TRUTH.

The lifeboat is lowered---will it bob empty, or be filled with the TRUTH of Mary Doe and the hearts of those souls who prayerfully see the TRUTH to preserve the TRUTH upon which the Nation was founded, and thereby preserve the Nation? History will tell.

The states, beginning with Kansas, are losing patience with the failure to lower lifeboats, and are lowering lifeboats of their own, following the dictates of their hearts, and the instruction of a very old Book.

Mary Doe humbly lays her plea, as a supplicant, at the feet of this Court, which stands, so long as our nation stands as a free nation, and in whom power to rescue her is reposed by virtue of the present respect accorded the Court by all fifty states. May the decision of this Court win

the respect of the One Whom the back of our money says the people of Kansas and the Nation most respect and TRUST.

The aforegoing quotes no case law of this Court. As a case of first impression, the law has yet to be written by the Court.

The U.S. Constitution, already written, it is respectfully proffered, grants watertight integrity to Mary Doe's lifeboat.

The Court knows the Constitution better than this country lawyer that seeks to represent Mary Doe ever will.

To some judges on the Court the Constitution is what it said when it was written; to others, it is what the Court decides it says and the 'interpretation' to be given it by the present judges.

This humble voice for Mary Doe would not pretend to advise the Court on the meaning of the Constitution. When the opinion of one judge on the Court as to the Constitution's meaning is not always respected by another judge of equal humanity, but different human politics, then and in that event the opinion of Mary Doe's supplicant never would be.

If the writer were allowed to respectfully proffer to the Court the words of one much older and wiser than himself, he would respectfully offer the words of Professor John W. Brabner-Smith (1900-1999) graduate of Yale Law School, founder of the International School of Law, now George Mason University Law School, who over the course of his life and studies, assembled the essay on natural law and the foundation of nation states published in unified form in 1991, when the writer was co-counsel, along with Professor Brabner-Smith in an earlier petition for a writ of certiorari in the Tennessee frozen human embryo case (No. 92-910 October term, 1992---*cert. denied*)

The essay of Professor Brabner-Smith, recognized national expert on 'natural law' at the time of the Judge Bork confirmation hearings, is respectfully attached for the edification of the Court (App. 202), along with testimony (out of which his essay grew) of the World Dean of

Geneticists, Dr. Jerome Lejeune (App. 135), whose testimony in the Tennessee frozen human embryo case, Professor Brabner-Smith called: "The greatest testimony EVER GIVEN in ANY COURT at ANY TIME."

III. Ripeness for Adjudication

When the new President of the United States requests airtime for his first address to the Nation on August 9, 2001, solely on the subject of human embryo (stem cell) research, the question of the Constitutional recognition of the equal humanity of the 'smallest of our kin' is 'Ripe' for adjudication.

> The President attempted a 'political compromise' saying it was all right to experiment on 'some' human embryos (stem cells extracted after killing living human embryos before the date of his speech).

But the President soon learned that protecting the sanctity of life (the lives of human embryos) was a little like cupping water in your hands---you must hold your fingers very **tightly** together. If you give even 'a little bit', you lose it all! Having 'given a little bit', the President found that he had lost his ability to contain a rush toward the denatured biology that he himself had referenced in his address to the nation on that night of August 9, 2001:

> **"We have arrived at that brave new world that seemed so distant in 1932 when Aldous Huxley wrote about human beings created in test tubes in what he called a hatchery."** - President George W. Bush

Under the microscope it is not possible to tell the difference between 'pre-August 9th human embryo stem cells' and 'post-August 9th human embryo stem cells'. We have only the 'word' (certification) of the labs selling these human embryo stem cells in this 'post-Enron record keeping' world.

An injunction is the only appropriate relief to protect human embryos until the matter of Mary Doe's Constitutional standing can be properly weighed and considered by the Court.

Thirty-three days after the President's speech (September 11, 2001) the President again had his hands full with protecting America from those who fail to recognize and respect the sanctity of innocent human life when the Twin Towers were collapsed in New York.

The President has led us well in this 'war against terrorism'. At the same time, he has re-doubled his effort, having learned from his mistake, to lead us nobly against those who fail to recognize and respect the sanctity of innocent human life at the very beginning - the human embryo.

In a speech delivered by the President on April 10, 2002 (curiously, on the day following dismissal of Mary Doe's Petition for Rehearing in the instant case by the Fourth Circuit) the **President stated** in pertinent part:

> **"...as we seek what is possible, we must always ask what is right, we must not forget that the most noble ends do not justify any means. (Applause)...human cloning is deeply troubling to me and to most Americans. Life is a creation, not a commodity (Applause). Our children are gifts to be loved and protected, not products to be designed and manufactured. Allowing cloning would be taking a significant step toward a society in which human beings are grown for spare body parts, and children are engineered to custom specifications; and that's not acceptable."**---President George W. Bush---Speech delivered in East Room, April 10, 2002 (App. 230)

The President needs support. The President needs the support of this Court (Mary Doe needs the support of the U.S. Constitution)! The issue of "standing" of Mary Doe to come into Court and protest her own destruction is ripe for

adjudication. The lower court does not agree. It apparently feels that a 'little' human embryo experimentation may be all right. To Mary Doe, even a 'little bit' is too much because she may be next.

The lower Court, in oral argument, seemed to toy with the notion that perhaps the bureaucrats promulgating "federal regulations" will resolve this essential Constitutional question. The lower federal court judge adamantly declined to rule on "standing" (seeking to obviate an appealable issue) and instead, after one year reflection on what to do, came into Court after the General election on February 26, 2001 and "**administratively closed**" Mary Doe's case, challenging her counsel to take an appeal of his decision of administrative closure if he so chose, while at the same time, expressing his doubts that the matter of his administrative closure was 'appealable' (since 'administrative closure', while acting as an 'interim dismissal' of the case, nevertheless, leaves it still 'technically open', thereby the judge assumed, making an appeal of his 'administrative closure' interlocutory and subject to being dismissed.)

Administrative closure is unknown to the Federal Rules of Procedure and apparently has been entirely invented by the local federal court as a local practice in instances that have gone unchallenged or which they did not see as otherwise being challenged on appeal.

To "administratively close" a matter or the essence of a matter with which the President of the United States, the people of the nation, and the Congress are wrestling flies in the face of common sense and has been employed by the lower court as a device that while seeming 'innocent' on its face has in reality been used as a subterfuge to attempt to defeat Mary Doe's right of appellate review and adjudication of compelling questions, including her 'standing' to come into court under the U.S. Constitution (appropriate motion for waiver of usual requirement of guardian filed in lower court).

The Fourth Circuit, having been made fully aware of Mary Doe's protest of this subterfuge, chose either to join in it or 'take the easy way out' because it issued a one-line decision, giving no reason except that the appeal was 'interlocutory', thereby adding its own imprimatur to the devilish trickery of the lower court judge.

This is the second time that this identical lower federal court judge has sought to defeat any claim on behalf of the human embryo for the adjudication of rights in the federal courts. In an earlier case (*International Foundation for Genetic Research v. Shalala*, 57 F.3d 1066 (4th Cir. 1995) *cert den.*) this same judge, Judge Messitte, a recent appointee of the Clinton Administration, ruled that the International Foundation for Genetic Research lacked "standing" to bring a case against the Clinton Administration protesting their plans of human embryo experimentation, and challenging the make-up of the human embryo research panel as stacked in violation of the Federal Advisory Committee Act. When the writer, as counsel for the International Foundation for Genetic Research in the earlier case was telephoned by Judge Messitte's law clerk and advised that his opinion in the case was ready to be picked up, and traveled to the federal courthouse so as to receive it right away, Judge Messitte's law clerk commented as she handed counsel the opinion: "The judge has written it in such a way that you can not win on appeal." This was a curious statement that proved to be prophetic, since both the Fourth Circuit and this Court declined to grant review.

The question of "standing" and who would have standing was discussed at length by the writer with respected Constitutional law authorities and professors throughout the nation. More questions than answers were produced. Therefore, this time around, after the Clinton Administration was forced to abandon its first human embryo research panel (as stacked because a prerequisite for membership on the panel was belief in human embryo experimentation---half of its members had received a total of $20 million in past NIH grants)----the Clinton

Administration then regrouped and convened another human embryo research panel under a different name: "The National Bioethics Advisory Commission" (seemingly when there is an attempt to change morality, they rename morals 'ethics' and convene a commission to investigate).

The trickery was in the words; the mischief the same. The Congress was up-in-arms with 77 members of the House of Representatives and the Senate signing on to letters of protest to NIH as doing an end-run around a Congressional prohibition against human embryo experimentation by renaming it "stem cell research" (Letters of the United States House of Representatives and United States Senate attached to the original complaint). Some thought was given by at least one member of Congress to filing suit against NIH to challenge the subterfuge of NIH that 77 members of Congress were vehemently protesting. While there was precedent for this (as when Congress filed suit to challenge the line-item veto) upon further reflection, Senator Brownback's office decided it should not ordinarily bring such a suit. The Clinton Administration was getting close to the finish line in their re-invention of the same old mischief. A 'voice' was needed for Mary Doe. And when no one else came forward, the writer filed the instant case that is the subject of this appeal.

All cases docketed in the Federal District Court for the District of Maryland in Greenbelt are assigned arbitrarily using the computer card deck system (a standing practice that was even more scrupulously adhered to in the backwash of publicity of the Clinton Administration succeeding in getting cases in which they had an interest assigned to judges they had appointed.) Accordingly, Mary Doe's case was initially assigned by the computer card deck system to Chief Judge Motz. But this was short-lived. Judge Messitte, a Clinton Administration appointee, who had ruled in favor of the Clinton Administration and against Mary Doe in an earlier case (*International Foundation for Genetic Research v. Shalala*, 57 F.3d 1066 (4th Cir. 1995) *cert den.*), succeeded in having this second case of Mary Doe re-

assigned to him. Protest was made to Judge Motz and he declined to act, leaving Judge Messitte to rule, himself, on the motion for his own recusal. Judge Messitte declined to recuse himself, tenaciously clinging to the case and was openly hostile to Mary Doe's cause, stating that he was not going to issue a ruling one way or the other on Mary Doe's 'standing' to come before him, indicating that he knew where the case was headed---up on appeal. The following is an excerpt from the Docket Sheet in the District Court that exemplifies Judge Messitte's action with regard to his judicial preemption of this case:

- Complaint filed - 8/10/99
- Case assigned arbitrarily by computer card-deck system to Chief Judge Motz
- Case reassigned to Judge Messitte - 8/25/99 (A call to the Clerk's office indicated that the entries on the Court computer screen showed that Judge Motz had typed in that he was not available because of a 'scheduling conflict' and directly beneath that Judge Messitte had typed in that he was available.)
- Letter sent requesting Judge Messitte's recusal - 9/7/99
- Order requesting Defendant's response to Request for Recusal - 9/17/99
- Response by Defendant to Request for Recusal - 10/12/99
- Order denying recusal, signed by J. Messitte - 10/15/99
- Motion to Reassign to Original Jurist - 11/10/99
- Defendant's Response to Motion to Reassign - 11/16/99
- Order denying Motion to Reassign, signed by J. Messitte - 12/1/99 No explanation was given as to why case was not reassigned by computer card deck system.

His decision on the matter of personhood was not to decide, and instead he placed her case in 'administrative closure', removing her from the docket, and thereby attempting to block her ability to appeal the matter to a higher court (so far, he has succeeded, because the Fourth Circuit Court of Appeals has declined to throw a red flag on the field, dismissing without comment Mary Doe's appeal,

adding the 'imprimatur' of an appellate court to such exercise of raw judicial power.) If this device of 'administrative closure' had been thought up back in the days of the Civil Rights cases that Thurgood Marshall brought to the Court, those cases might still be locked in some judge's safe in the Deep South, having never seen appropriate appellate review.

On February 28, 2000 oral arguments were scheduled in the matter and the case was continued by Judge Messitte indicating he wanted to consider the 'statutory implications'. Judge Messitte took no action in the case until the government issued its guidelines for research using pluripotent stem cells on August 23, 2000. Then the matter was set back in for oral argument, then continued three times on the Court's own motion, finally coming on for hearing February 26, 2001.

Judge Messitte was told in open court that the reason why Mary Doe's case had this time been filed in her name alone, was because no one could agree who would have standing and therefore the case was brought in her name, individually, since if she was found not to have standing by virtue of the fact that she lacked equal humanity and personhood to bring her own claim, then and in that event, this was the very issue (the equal humanity and personhood of Mary Doe) that needed to be ultimately decided by the nation's High Court.

Judge Messitte 'administratively closed' the case (attempting to 'checkmate' her right to an adjudication on the issue of her inalienable rights). This places the case in judicial limbo and the **question of Mary Doe's equal humanity, which transcends all political administrations and is never moot**, lingers without an opportunity to be fully heard.

President Bush was later to address the nation on this very subject on August 9, 2001.

NIH, caught by surprise at the change of administrations, was forced to put on hold its full speed ahead opening of the floodgates of federal dollars to human

embryo experimentation (stem cell research), cloning, ect. The 'powers that be' at NIH, however, convinced that they know better than the President and the Congress, are intent on going forward with the full panoply of human embryo experimentation promised them under the Clinton Administration. Not to be outdone, they put together an orchestrated statement of 80 Nobel Prize winners (none of which held a Nobel Prize in Morals) stating that great advances for the living could come from experimenting upon these very tiny, living human beings. Curiously, the report of this in the Nation's press was just in time for the Government lawyer to bring it to Court and hand it up to Judge Messitte on February 26, 2001. An equal number of Nobel Prize winning laureates could easily be assembled advocating the need to recognize the sanctity of the lives of human embryos and explaining that the tree of science is a tree both of the fruit of good and evil.

In support of the President, the writer handed the Judge a letter, addressed to Mary Doe's counsel, over the signature of President Bush(then 'Governor' Bush) dated November 1, 2000 (App. 130), in which the President stated in pertinent part: "I oppose federal funding for stem-cell research that involves **destroying living human embryos**." (App. 130) It was hoped that the judge would seize on the moral position of the President and enter a temporary injunction against any and all human embryo experimentation, but on the record, the judge continued to dodge and side-step the issue and **refused** to enter any such **injunction**.

An injunction by the Court would have made the President's job much, much easier. Instead, the President was left out there alone to fight these mammoth forces which had already planned the budgeting and spending of the tens of millions of dollars they were anticipating receiving from the Clinton Administration for human embryo experimentation (stem cell research), when the election was unexpectedly thrown into this Court and finally decided, to their chagrin, in their disfavor.

They lobbied the President relentlessly until he attempted to strike a "political compromise". The results have been disastrous. Once the President opened the barn door "even a little" every stallion in the barn (the black horses of human embryo experimentation and cloning) stampeded out the door. (To depersonalize the human embryo, the experimenters rename them 'pre-embryos'. They kill them and extract their stem cells which they are curious to tinker with, and change the name of "human embryo experimentation" to "stem cell research"---the same denatured biology given a different name, which depersonalizes the equal humanity of the very small human being upon which they experiment without permission of that human being, in violation of the Nuremberg Code).

The Baltimore Sun paper of April 28, 2002, carried a story datelined Vienna, Austria, in which the last remains of children killed by the Nazis in hospitals there were buried, bringing closure to this earlier denatured biology of some 60 years ago. The Baltimore Sun put it this way:

> " Friedrich Zawrel realized he could be the next child on the Nazis' death list when he peeked from his hospital cell and saw two orderlies walking toward a hearse with small bodies clamped under their arms.
>
> For another man, Walter Zehetner, the same grisly truth---that the Nazis killed children they deemed less than perfect---lay hidden at the bottom of a drawer until 1997. Going through papers after his mother's death, he discovered that a brother had also been a victim of this policy.
>
> The Nazis called these human beings 'worthless lives.' Across Europe, 75,000 people, including 5,000 children, were killed for real or imagined disabilities.
>
> Vienna's city government hopes to close a particularly gruesome chapter in this book of horrors. It recently buried most of the brains and other remains of about 600 children who were killed

at a city hospital by the Nazis and used up to 1978 for medical research." The Baltimore Sun, Sunday April 28, 2002 page 21A

Notice that this denatured biology, run amuck, over all morality was called "**medical research.**" When they broke the Commandment: "Thou shalt not kill", they, no doubt, first placed the ones killed in a different 'category' from themselves---the physically or politically 'unfit'. They no doubt changed morality by first renaming it 'ethics' and convening commissions to inquire whether it was 'ethically proper' to learn from the preserved brains of children killed for experimentation. In fact, those same brains were used up until 1978 (the reasoning being: "after all, they're already dead"). 60 years later, a new generation at our own National Institutes of Health in Bethesda, Maryland says to themselves: "These stem cells are from human embryos (tiny children) that are already killed---what's the harm in experimenting upon them?" **It's been said that all we ever learn from History is that we never learn from History!(?)**

It is the ever-expanding and insatiable definition of "**medical research**" that the President himself is engaged in fighting with all his might.

The President realizes now, in retrospect, that when he attempted a political compromise on August 9, 2001, on the subject of human embryo experimentation and raised the latch on the barn door and opened it just a little bit, all the stallions (on human embryo experimentation and cloning) have come stampeding out, knocking the door off its hinges, with the President, himself running for cover, where he is perched high on the corral fence, with these stallions rearing up in the barnyard wanting more and more and more, causing the President to have to go into the East Room of the White House and plead for a stop to even the thought of human cloning and the beginning of the denatured biology that was foreseen and foreshadowed in Aldous Huxley's A Brave New World of 1932.

The Congress is divided. Some want to open the gate to the outside pasture and let the stallions of experimentation run and stampede wherever they will. Some in the Congress want to restore order and respect for the sanctity of human life and keep the corral gate shut until this Court can address the issue. The states of the union (beginning with Kansas) are beginning to move in to put their own shoulder to the corral gates to keep them closed.

The President and the nation desperately and dearly need the help of the Court.

IV. Did the Fourth Circuit Court of Appeals err in its duty to recognize and take up these issues?

Not only were the issues timely when Mary Doe's appeal was noted to the Fourth Circuit, but they remain so and have built in crescendo (as evidenced by the President's address on April 10, 2002 one day after the Fourth Circuit's denial of Petition for Rehearing on April 9, 2002) (App. 230)

In a curious coincidence that no one could have foreseen when the case was initially filed on August 10, 1999, or when Judge Messitte 'administratively closed' the case on February 26, 2001, Mary Doe now rings the doorbell of this Court precisely when the question of her equal humanity is before the Congress and being spoken of by the President in the East Room (App. 230), and America at their Breakfast Tables.

When a lower federal court judge sought to 'sweep Mary Doe under the rug', he hit her with the broom with such vehemence and at such an 'angle' that she entirely missed the rug and has landed all the way on the doormat of the United States Supreme Court (quite some distance from Greenbelt, Maryland as the crow flies.) Counsel, undeserving of being a spokesperson for this little one that figuratively glows with a white-hot incandescence, having just been released from the fingertip of God, rings the doorbell of this venerable institution, where appointed human beings are assembled as 'flowers of the field' to lift up their heads to Truth and seek to do Justice.

Her day has arrived in science (a tree of both the fruit of good and evil) and as America's 'Breakfast Table Talk', her time has come to the breakfast table of the White House and the Congress and assuredly this Court, which knowing the lengthy road that lies ahead for any appeal to come before this Court, will prayerfully recognize in Mary Doe's plea as propounded, the coming together of the words and wisdom of the World Dean of Geneticists, Dr. Jerome Lejeune (who was to the world of genetics what Einstein was to physics) who explains that what he has to say, respecting science, is accepted as truth by all scientists (App. 135); along with the affidavit of the noted Professor Emeritus of Anatomy, Department of Cell Biology and Anatomy of the University of Arizona in Tucson, C. Ward Kischer, PhD. (App. 79; *Curriculum Vitae*, App. 83); statement of Frank E. Young, MD, PhD before the Senate Committee (App. 68), and scholarly reflection of Professor John W. Brabner-Smith, founder of the International School of Law and recognized federal expert on "natural law" (arguably displaying the sagely wisdom of a 'Benjamin Franklin') (App. 202). This bringing together of the scientific facts about Mary Doe and the application of those facts to our nation's Declaration of Independence (the 'charter' of our nation) and the United States Constitution (the 'by-laws' of our nation) is respectfully proffered for this Court's consideration and reflection.

V. Does Mary Doe possess 'standing' under the Constitution to protest her own destruction at the hands of the Federal Government (appropriation of federal dollars to private experimental facilities for human embryo (stem-cell research and human cloning)?

It is respectfully proffered that the question can best be addressed in oral argument before this Court.

"There are always some who suggest that we alter morality whenever any innovation seems to require it or a disruption of the mores suggest it. This method has no

future, because it cannot surmount the decisive difficulty: Technology is cumulative; wisdom is not."---Dr. Jerome Lejeune

What is the wisdom of this Court on the Constitutional equality and 'standing' of Mary Doe?

Each justice has already sketched those Constitutional arguments out in his or her head a thousand times. The very mention of the subject of the equal humanity and Constitutional 'personhood' of the human embryo causes the arguments to flow from the judicial mind.

It is time to come together and reason together, as a Nation looking to the Court to lead the way.

The equal humanity and personhood of the human embryo is being denied by the hardened heart of man. Mary Doe lies prostrate, as a humble supplicant on the doormat of this Court. Will the large, bronze door swing open that she might come in and seek entry into the hearts of those inside its marble halls of justice? As we have done unto the least of these, our brethren, we did it unto Him.

Counsel, on behalf of Mary Doe, has simply sought to set forth the reasons why it is 'right' and 'just' to grant her Writ of Certiorari, without attempting to quote any case law of the Court. As a case of first impression, it seems the Court will want to begin with a 'Blank Canvas' and a 'New Brush'.

Dr. Jerome Lejeune, who departed this life at sunrise on Easter morning, 1994, left us with this reflection in an address delivered to the assembled academic and medical community of Washington, DC:

> "There remains however, another question. Our power grows daily. We are going to make new beings (bacteria, vegetable, animals) by ways other than by natural or artificial selection. By that very fact we are certainly going to modify the destiny of man before he perhaps modifies himself. I do not know if we shall be able, during our lifetime, to modify the human brain, but no one can show that this will always be impossible. In short, we are going

to become more and more powerful. **The biological bomb is probably more dangerous for humanity than the thermo-nuclear bomb.** Then we will indeed require something to guide us. It will be necessary to establish or rediscover a term of reference. Who can tell whether this will be good or bad? Who will teach us that?

In my profession as physician and geneticist, such questions arise every day.

Of course, there are always some who suggest that we alter morality whenever any innovation seems to require it or a disruption of the mores suggests it. This method has no future because it cannot surmount the decisive difficulty: 'Technology is cumulative, wisdom is not.'

So what are we left with? Wisdom itself: What you have done to the smallest of mine you have done unto Me. If specialists remember that, science will remain the honest servant of the human family but, if they forget it, if they forget that there exists above all a supernatural morality everything could be feared from a denatured biology."---Dr. Jerome Lejeune "Is There a Natural Morality?"

Mary Doe's prayer for certiorari rests. Is there the echo of footsteps of at least four(although in the past, there have been cases when three justices or less have been strong enough to get a case heard) justices coming down the hall to open the door?

CONCLUSION

For the foregoing reasons, Petitioner, on behalf of Mary Doe, your supplicant, respectfully prays that her Petition for Writ of Certiorari be granted.

Respectfully submitted,

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JUDGMENT

FILED: February 7, 2002
[ENTERED: February 7, 2002]

UNITED STATES COURT OF APPEALS
For The
Fourth Circuit

MARY DOE, a human embryo "born" in the United States (and subsequently frozen in which state of cryopreservaton her life is presently suspended) individually and on behalf of all other frozen human embryos similarly situated;
THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF PREBORN CHILDREN,
Plaintiffs-Appellants,

v. No. 01-1298

DONNA E. SHALALA, in her official capacity as Secretary of Health and Human Services;
U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES;
HAROLD VARMUS, in his official capacity as Director of the National Institutes of Health;
NATIONAL INSTITUTES OF HEALTH,
Defendants-Appellees.

NATIONAL ORGANIZATION FOR EMBRYONIC LAW,
Amicus Curiae.

Appeal from the United States District Court for the District of Maryland, at Greenbelt.

In accordance with the written opinion of this Court filed this day, the Court dismisses the appeal.

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

==========

MARY DOE, a human embryo "born" in the United States (and subsequently frozen in which state of cryopreservaton her life is presently suspended) individually and on behalf of all other frozen human embryos similarly situated;
THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF PREBORN CHILDREN,
Plaintiffs-Appellants,

v. No. 01-1298

DONNA E. SHALALA, in her official capacity as Secretary of Health and Human Services;
U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES;
HAROLD VARMUS, in his official capacity as Director of the National Institutes of Health;
NATIONAL INSTITUTES OF HEALTH,
Defendants-Appellees.

NATIONAL ORGANIZATION FOR EMBRYONIC LAW,
Amicus Curiae.

==========

Appeal from the United States District Court
for the District of Maryland, at Greenbelt.
Peter J. Messitte, District Judge.
(CA-99-2428-PJM)

Submitted: January 23, 2002
Decided: February 7, 2002
[Entered: February 7, 2002]

Before WIDENER and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

COUNSEL

R. Martin Palmer, Jr., MARTIN PALMER & ASSOCIATES, Hagerstown, Maryland, for Appellants. Robert D. McCallum, Jr., Assistant Attorney General, Thomas M. DiBiagio, United States Attorney, Larry D. Adams, Assistant United States Attorney, Mark B. Stern, Thomas M. Bondy, Appellate Staff, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellees. Clifford J. Stevens, NATIONAL ORGANIZATION FOR EMBRYONIC LAW, Virginia Dale, Colorado, for Amicus Curiae.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Mary Doe, a human embryo "born" in the United States (and subsequently frozen in which state of cryopreservation her life is presently suspended), individually and on behalf of all other frozen human embryos similarly situated, and the National Association for the Advancement of Preborn Children (collectively "Appellants") appeal the district court's order

administratively closing their civil lawsuit challenging the Clinton Administration's policies regarding federal funding of human stem cell research. We dismiss the appeal for lack of jurisdiction because the order is not appealable.

This court may exercise jurisdiction only over final orders, 28 U.S.C. S 1291 (1994), and certain interlocutory and collateral orders, 28 U.S.C. S 1292 (1994); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949). The order here appealed is neither a final order nor an appealable interlocutory or collateral order. It merely removes the case from the district court's active docket until the issue of federal funding for stem cell research is settled by the Bush Administration.

We therefore dismiss the appeal as interlocutory. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED: Aril 9, 2002

No. 01-1298
CA-99-2428-PJM

MARY DOE, a human embryo "born" in the United States (and subsequently frozen in which state of cryopreservation her life is presently suspended) individually and on behalf of all other frozen human embryos similarly situated; THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF PREBORN CHILDREN,
Plaintiffs – Appellants,

v.

DONNA E. SHALALA, in her official capacity as Secretary of Health and Human Services; U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES; HAROLD VARMUS, in his official capacity as Director of the National Institutes of Health; NATIONAL INSTITUTES OF HEALTH,
Defendants – Appellees.

NATIONAL ORGANIZATION FOR EMBRYONIC LAW,
Amicus Curiae.

ORDER

The appellant has filed a petition for rehearing. The Court denies the petition for rehearing.

For the Court,
/s/ Patricia S. Conner
Clerk

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
LEWIS F. POWELL, JR. UNITED STATES COURTHOUSE
ANNEX
1100 EAST MAIN STREET, SUITE 501
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PATRICIA S. CONNOR — TELEPHONE
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January 23, 2002

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Martin Palms, Jr., Esq.
21 Summit Avenue
Hagerstown, MD 21740

Re: 01-1298 Doe v. Shalala
CA-99-2428-PJM

Dear Counsel:

This appeal has been referred to a panel of three judges so that they may review the case before scheduling oral argument for possible disposition pursuant to Rule 34 of the Federal Rules of Appellate Procedure and Fourth Circuit Local Rule 34(a).

If the panel to whom this appeal has been submitted unanimously agrees that oral argument is unnecessary, the panel will issue its decision without further notice to counsel that oral argument will not be scheduled. Alternatively, if the panel determines that oral argument is warranted, counsel will received notice that the appeal have been placed on the Court's oral argument calendar.

Yours truly,

PATRICIA S. CONNOR
Clerk

By:/s/ M. Hawk
M. Hawk
Deputy Clerk

UNITED STATE DISTRICT COURT
DISTRICT OF MARYLAND
6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770

Peter J. Messitte
Judge

MEMORANDUM

To: Counsel of Record
From: Judge Peter J. Messitte
Re: Doe v. Shalala
Civil No. PJM 99-2428

Date: February 26, 2001

* * * * * * * * * * *

For the reasons set forth at this afternoon's hearing, the Clerk is directed to ADMINISTRATIVELY CLOSE this case. Defense counsel shall advise Plaintiffs' counsel and the Court every sixty days hereafter regarding the status of the Human Pluripotent stem Cell Research Guidelines. Accordingly, Defendants' Motion to Continue Hearing for 60 Days is MOOT.

Despite the informal nature of this ruling, it constitutes an Order of the Court and the Clerk shall docket it accordingly.

/s/ Peter J. Messitte
Peter J. Messitte
United States District Judge

cc: Court File

We hold these truths to be self-evident, that all men are CREATED EQUAL; that they are endowed by their Creator with certain unalienable rights; that among these, are life, liberty, and the pursuit of happiness.

--Declaration of Independence

Emancipation Proclamation

of Preborn Children

NOW THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim and declare the unalienable personhood of every American, from the moment of conception until natural death, and I do proclaim, ordain, and declare that I will take care that the Constitution and laws of the United States are faithfully executed for the protection of America's unborn children. Upon this act, sincerely believed to be an act of justice, warranted by the Constitution, I invoke the considerate judgement of mankind and the gracious favor of Almighty God. I also proclaim Sunday, January 17, 1988, as a national Sanctity of Human Life Day. I call upon the citizens of this blessed land to gather on that day in their homes and places of worship to give thanks for the gift of life they enjoy and to reaffirm their commitment to the dignity of every human being and sanctity of every human life.

-- Ronald Reagan

Presidential Proclamation January 14, 1988

"We hold these truths to be self-evident, that all men are CREATED EQUAL; that they are endowed by their Creator with certain unalienable rights; that among these, are life, liberty, and the pursuit of happiness."

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\s\ Ronald Reagan
Ronald Reagan

Presidential Proclamation
January 14, 1988

National Sanctity of Human Life Day, 2002
By the President of the United States of America
A Proclamation

This Nation was founded upon the belief that every human being is endowed by our Creator with certain **"unalienable rights."** Chief among them is the right to life itself. The Signers of the Declaration of Independence pledged their own lives, fortunes, and honor to guarantee inalienable rights for all of the new country's citizens. These visionaries recognized that an essential human dignity attached to all persons by virtue of their very existence and not just to the strong, the independent, or the healthy. That value should apply to every American, including the elderly and the unprotected, the weak and the infirm, and even to the unwanted.

Thomas Jefferson wrote that, "[t]he care of human life and happiness and not their destruction is the first and only legitimate object of good government." President Jefferson was right. **Life is an inalienable right**, understood as given to each of us by our **Creator**.

President Jefferson's timeless principle obligates us to pursue a civil society that will democratically embrace its essential moral duties, including defending the elderly, strengthening the weak, **protecting the defenseless**, feeding the hungry, and caring for children -- **born and unborn**. Mindful of these and other obligations, we should join together in pursuit of a more compassionate society, rejecting the notion that some lives are less worthy of protection than others, whether because of age or illness, social circumstance or economic condition. Consistent with the core principles about which Thomas Jefferson wrote, and to which the Founders subscribed, we should peacefully commit ourselves to seeking a society that **values life -- from its very beginnings** to its natural end. Unborn children should be welcomed in life and protected in law.

On September 11, we saw clearly that evil exists in this world, and that it does not value life. The terrible events of that fateful day have given us, as a Nation, a greater understanding about the value and wonder of life. Every innocent life taken that day was the most important person on earth to somebody; and every death extinguished a world. Now we are engaged in a fight against evil and tyranny to preserve and protect life. In so doing, we are standing again for those **core principles upon which our Nation was founded.**

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Sunday, January 20, 2002, as National Sanctity of Human Life Day. I call upon all Americans to reflect upon the sanctity of human life. Let us recognize the day with appropriate ceremonies in our **homes and places of worship**, rededicate ourselves to compassionate service on behalf of the weak and defenseless, and **REAFFIRM OUR COMMITMENT TO RESPECT THE LIFE AND DIGNITY OF EVERY HUMAN BEING.**

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of January, in the **year of our Lord** two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.

GEORGE W. BUSH
(Emphasis added)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE, MARYLAND

MARY DOE, a human embryo "born" in the United States (and subsequently frozen in which state of cryo-preservation her life is presently suspended), all other frozen human embryos similarly situated; and the National Association for the Advancement of Preborn Children (NAAPC), *Plaintiffs,*	)	Civil Action No. PJM 99-2428 COMPLAINT
vs.	)	
DONNA SHALALA, in her official capacity as Secretary of Health and Human Services; DEPARTMENT OF HEALTH AND HUMAN SERVICES; DR. HAROLD VARMUS, in his official capacity as Director of the National Institutes of Health; and NATIONAL INSTITUTES OF HEALTH, *Defendants.*	)	

Plaintiffs, by way of complaint against the Defendants, allege the following:

NATURE OF ACTION

1. This is an action for declaratory, injunctive and other appropriate relief, brought under the Declaratory Judgment Act, 28 U.S.C., Section 551 et seq., and seeking (a) the entry of a declaratory judgment that Mary Doe, as a citizen of the United States of America, is entitled to the

equal protection of the laws thereof and that the President's Advisory Commission and the National Institutes of Health violate Mary Doe's rights under the Fourteenth Amendment to the United States Constitution by issuing and/or implementing recommendations for human embryo experimentation; which result in her certain and sudden death, and (b) the entry of an injunction ordering the current administration, the Department of Health and Human Services and the National Institutes of Health to cease and desist any and all plans to undertake human embryo (stem cell) experimentation.

JURISDICTION AND VENUE

2. Jurisdiction over this actions is conferred by the federal question jurisdiction statute, 28 U.S.C., Section 1331.

3. Venue is properly reposed in this Court by virtue of 28 U.S.C., Section 1391(e).

PARTIES

4. Plaintiff Mary Doe is a human embryo "born" (produced or brought into life) in the United States, as that term is defined in the Fourteenth Amendment to the United States Constitution (and specifically as the word "born" is defined in Webster's Dictionary, Complete and Unabridged, of 1857, contemporaneous with, the passage of the Fourteenth Amendment (1868).

5. Plaintiff National Association for the Advancement of Preborn Children is an organization dedicated to advocacy for the equal humanity and personhood of preborn children, including "children in vitro", with offices located in Hagerstown, Maryland.

6. Defendant Donna Shalala is currently the Secretary of Health and Human Services and is the head of the Department of Health and Human Services.

7. Defendant Department of Health and Human Services is an agency within the Executive Branch of the federal government.

8. Defendant Dr. Harold Varmus is currently the Director of the National Institutes of Health, who has his office in Bethesda, Maryland.

9. Defendant National Institutes of Health is a division within the Department of Health and Human Services, with offices located In Bethesda, Maryland.

FACTUAL EXPLANATION OF THE EQUAL HUMANITY AND PERSONHOOD OF MARY DOE

10. That Mary Doe is a human embryo "produced or brought into life" by the new science of in vitro (Latin for "in glass") fertilization whereby the process of fertilization, which produces or brings her into life, takes place not in a tube of flesh (the fallopian tube) but in a tube of glass (the test tube); after which life for her has been suspended by the freezing of Mary Doe in liquid nitrogen (cryo-preservation).

11. That the modern science of in vitro fertilization allows Mary Doe to be returned to the warmth of life, after storage for months or years in a frozen state, and implanted In the womb of an adopting mother as a "child in vitro."

12. That the modern science of in vitro fertilization has given rise to the adoption of "children in vitro" as human embryos, and Mary Doe, on behalf of herself as a frozen human embryo and all others similarly situated, prays an injunction against her use for human embryo experimentation (stem cell research) which would result in her certain death so that she might, in place of death, be given the opportunity of adoption as a "child in

vitro" and her life, which has temporarily been brought to a standstill in the deep freeze, would be allowed to resume upon returning her to the warmth of life and the loving option of adoption as a "child in vitro" so that she might fulfill her destiny.

13. That everything necessary to build Mary Doe is present, sufficient and complete, from the very beginning. Nothing is added. Everything necessary to build the human brain, capable of going to the moon and putting foot upon the moon, is locked in at the moment of fertilization.

14. That such a realization is too wonderful for man. It is high; he cannot attain unto it.

15. That science now proves to man the truth of his being from the very beginning - as a newly conceived (fertilized) human being.

16. That science now proves to man that he is fearfully and wonderfully made; the creation of God.

17. That Mary Doe's forefathers truly stated in the Declaration of Independence, the charter of her nation, that

> ". . . all men are CREATED (by God) equal and endowed by their CREATOR with certain unalienable rights, that among these are life, liberty and the pursuit of happiness."

18. That Mary Doe by virtue of her equal creation claims her equal right to life, liberty and the pursuit of happiness.

19. That included within Mary Doe's right to life, liberty and the pursuit of happiness is her right to be adopted by a married couple wishing to adopt a frozen human embryo (a "child in vitro"), at which time Mary Doe is removed from the deep freeze of cryo-preservation and returned to the warmth of life, being implanted in the adopting mother's womb.

20. That Mary Doe then begins her nine month journey within the "innerspace" of the vaulted temple of the womb with its filtered reddish light (curiously much like the filtered light of a stained glass cathedral that man later builds himself).

21. That Mary Doe's entire substance is seen and known to her Creator when she is yet unformed, and in her Creator's book all her members are written, which in continuance are fashioned, when as yet there are none of them.

22. That Mary Doe, as a human embryo, has been produced or brought into life from the moment of her conception (fertilization).

23. That the 1857 edition of Webster's Dictionary defines "born" as: "produced or brought into life." (A copy of the title pages and definition page of said Webster's Dictionary [available in the Library of Congress] is attached hereto and made a part hereof.)

24. That newly discovered scientific evidence causes this old definition of "born" found in Webster's Dictionary contemporaneous with the passage of the Fourteenth Amendment (1868) to be more accurate than the definition of "born" found in the modern dictionary, for Mary Doe has truly been "produced or brought into life" at the moment of her conception as a human embryo. Mary Doe proves this to man over and over again when she is frozen by the technician, stored in such a frozen state (cryo-preservation) for months or years, taken out of the freezer and shipped, while still frozen, by overnight express to another city where she may be implanted in the womb of an adopting mother. (The Court will be able to take judicial notice that at the close of the twentieth century we now have mothers carrying to term their own daughter's child, such that the grandmother's temple of the womb offers temporary shelter to her granddaughter conceived by that grandmother's daughter).

25. That the Court may likewise take judicial notice of the fact that there is no requirement that a frozen human embryo be returned to the womb of her genetic mother to continue to grow, but rather the newly (fertilized) human embryo may be offered shelter in the womb of an adopting mother.

26. That the Court can take judicial notice of the fact that adoption of frozen embryos is a common occurrence, and that entire organizations have come into being and now exist to bring together frozen human embryos and prospective adoptive parents (the Christian Adoption and Family Services of California being one such organization).

27. That complete and sufficient within Mary Doe is the ability to build herself - like a little astronaut in "innerspace" (of the temple of the womb) Mary Doe hooks onto the wall of the womb for nutrients and oxygen and builds and extends her own little astronaut lifeline (placenta) through which she will continue to receive nutrients and oxygen with which to build the temple of her body, which will be nine months in completion.

28. That for the purpose of building the temple of her body Mary Doe builds a little bubble spacesuit around herself for her journey in "innerspace" until she passes a chemical message over her placenta back to the body of her "mothership" signaling and initiating in her mother's body the contractions of "labor" which will "deliver" Mary Doe from the "innerspace" of the 'temple of the womb' to the outerspace of the sunshine of her fellow humanity.

29. That at the close of the twentieth century even skeptics are made to understand that Mary Doe is a being; and being human, she is a human being; she is 'person' and not "property" because she is the only property which has the property of building herself, even the human brain capable of going to the moon and putting foot on the moon.

30. That when frail humanity considers how fearfully and wonderfully Mary Doe is made, man, who is truly understanding, comes to realize that Mary Doe as a human embryo figuratively glows with a white hot incandescence, having just been released from the fingertip of God.

31. That as such, Mary Doe is given to receive the reverential respect of man; and she is given to receive the equal respect of the high constitutional ideals and protection of the laws of the United States of America.

32. That to deny such equal protection to Mary Doe is to ultimately deny the protection of the Constitution to all Americans; for in denying Mary Doe the equal protection of the laws we pull the sanctity of life thread that permeates all of life.

33. That if we ask Science: "What is a human being?", Science responds: "A human being is a member of our species." And if we ask Science: "What is a person?", Science responds: "A person is a human being alive." And Science has no other answer.

34. That if we tour a temple or cathedral, not knowing the builder, we recognize it to be the manifestation of rational thought and plan. The temple is not a person; but a person (a human being alive, capable of rational thought) designed and built the cathedral.

35. That likewise, when we contemplate the fearful wonder of Mary Doe who will build for herself the wondrous temple of the body, we realize such a cathedral to be the manifestation of rational thought and plan. It was built by a person, capable of rational thought.

36. That if we acknowledge that the builder of the temple of Mary Doe's body is, in fact, God, Mary Doe is entitled to reverential respect as a creation of God.

37. That if we choose to deny that it is God who fashions Mary Doe and knits together the temple of her body, then and in that event we are left only with Mary Doe who must be her own builder, fashioning together herself,

even the human brain capable of going to the moon and putting foot on the moon is then built by Mary Doe, possessed of a truly rational nature. As such Mary Doe is, in and of herself, "a person" as that term is defined in Webster's 1857 dictionary: "1. An individual human being consisting of body and soul. We apply the word to living beings only, possessed of a rational nature; the body when dead is not called a person. It is applied alike to a man, woman, or child. 2. A man, woman, or child, considered as opposed to things, or distinct from them. 3. A human being, considered with respect to the living body or corporeal existence only. The form of her person is elegant. 4. A human being, indefinitely; one; a man. Let a person's attainments be never so great, he should remember he is frail and imperfect."

38. That there is no countervailing personhood with constitutional rights that allegedly overshadows Mary Doe's personhood and constitutional rights (this is not an abortion case.

39. That if we correctly understand that it is God who builds Mary Doe's temple of a body, then we believe in God and must reverentially honor and respect Mary Doe as a creation of God, and we understand that we must do unto Mary Doe as we would have Mary Doe do unto us if she were the adult lab technician about to choose between vivisecting and experimenting upon us as a human embryo or giving us over instead to the loving opportunity of adoption as a "child in vitro."

FACTUAL BACKGROUND OF THE CASE

40. On July 13, 1999 a Presidential Advisory Commission (stacked in favor of human embryo experimentation) concluded that federally funded scientists should be allowed to use "donated" (by whom and by what authority are human beings bartered and sold and at what price?) human embryos for bio-medical research.

41. That Mary Doe respectfully proffers that she has the opportunity to be adopted as a 'child in vitro' by virtue of the fact that adoption of frozen human embryos is a growing, current and ongoing factual occurrence in the united States and many organizations have been formed in the nation coordinating the bringing together of 'children in vitro' and childless couples who wish to adopt a 'child in vitro', which would afford Mary Doe the opportunity to be implanted in an adoptive mother's womb so that she might fulfill her destiny.

42. That all past presidential administrations have banned human embryo experimentation.

43. That the current administration and the defendants in the recent past undertook to begin human embryo experimentation and the united States Congress, as part of stop-gap spending bills, added the proviso that no federal funds be used for human embryo experimentation. The attempt by the defendants to come in the back door and begin human embryo experimentation was thereby closed.

44. That the defendants have opined that in their opinion: "Stem cell research" (stem cells are extracted from living human embryos) does not fall under the Congressional ban against use of federal funds for human embryo experimentation. Having been barred at the back door, the defendants are now trying to climb in the back window and they have one leg through the window.

45. That the utilitarian thinking underlying the defendant's proposed human embryo experimentation (stem cell research) is what led to Nazi experimentation during World War II (and of all the experiments performed upon human beings by the Nazis - and they had an unlimited number available to them in the concentration camps - not a single advance for medical science resulted). The United States government now seeks similarly to begin experimentation on human embryos confined to the concentration can of the liquid nitrogen, the wall of which also imprisons innocents (just as the wall of the

concentration camp imprisoned innocents). This same utilitarian thinking led the United States government to the radiation experiments during the Cold War.

46. That despite this recent history, the Department of Health and Human Services stands poised to release research grants to experimenters who will begin human embryonic stem cell experimentation.

47. That to relegate Mary Doe to human embryo experimentation (stem cell research) is to make a slave of Mary Doe - in violation of the prohibition against slavery under the Thirteenth Amendment to the United States Constitution.

COUNT ONE - THE PRESIDENT'S ADVISORY COMMISSION RECOMMENDATIONS FAIL TO RECOGNIZE MARY DOE'S EQUAL HUMANITY AND PERSONHOOD AND, THEREFORE, VIOLATE HER FOURTEENTH AMENDMENT RIGHTS TO EQUAL PROTECTION AND THE DUE PROCESS OF LAW

48. That Mary Doe hereby asserts and reiterates the rights enunciated by her forefathers in the Declaration of Independence (the 'charter' of this her nation) who asserted for all then current and future generations that: ". . . all men are CREATED equal and endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. ." and that her forbearer and previous President of the United States, Abraham Lincoln pointed to these words in challenging the decision of the United States Supreme Court in (Dred) Scott v. Sanford, 60 U.S. 393. In so doing, President Lincoln went over the head of the United States Supreme Court which had wrongly disavowed the equal humanity and personhood of the Negro slave (black man).

49. That following the Civil War and the death of Abraham Lincoln the people of the United States adopted the Fourteenth Amendment to the United States Constitution (1868), which provided in pertinent part:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

50. That Mary Doe, on behalf of herself and all others similarly situated, respectfully proffers unto this Honorable Court that she has been "produced or brought into life as a child in vitro" and as such is a citizen of the United States and of the State wherein she resides in a state of cryo-preservation.

51. That Mary Doe, as a citizen of the United States, should be recognized by the Presidential Advisory Commission and others in the current administration as having equal humanity and personhood with other citizens.

COUNT TWO -HUMAN EMBRYO EXPERIMENTATION RESULTS IN THE CERTAIN DEATH OF MARY DOE AND, THEREFORE, VIOLATES HER FOURTEENTH AMENDMENT RIGHTS TO EQUAL PROTECTION AND THE DUE PROCESS OF LAW

52. Plaintiffs hereby incorporate the allegations of Paragraphs 1 through 51 as if fully set forth herein at length.

53. That Mary Doe respectfully prays and implores this Honorable Court that she be afforded the equal protection of the laws available to her under the Fourteenth Amendment of the United States Constitution and that she not be deprived of her opportunity for continued life, and liberty from the 'concentration can' of the liquid nitrogen without due process of the law.

54. That human embryo experimentation results in the certain sudden and instant death of Mary Doe and, therefore, is a deprivation of her rights under the Fourteenth Amendment and she is deprived of those rights when her equal humanity and personhood is not recognized by the current administration and the National Institutes of Health, when they recommend allowing her death through human embryo experimentation.

55. Mary Doe specifically prays, on behalf of herself and all others similarly situated, that those who covet her life for purposes of experimentation upon her as a human embryo be enjoined from doing so to preserve and protect the lives of Mary Doe and all others similarly situated, in existence as human embryos; and Mary Doe prays that this Honorable Court cause to be entered up an injunction against the defendants, said injunction to prohibit the donation or use of Mary Doe and all other frozen embryos similarly situated for stem cell research or human embryo experimentation.

WHEREFORE, Plaintiffs pray:

(a) That this Honorable Court declare the equal humanity and personhood of Mary Doe and grant her equal protection and due process of the laws, as a citizen of the united States entitled to the equal protection of the laws thereof.

(b) That this Honorable Court find that the President's Advisory Commission recommendations fail to recognize Mary Doe's equal humanity and personhood and

therefore, violate her rights to equal protection and the due process of law.

(c) That this Honorable Court declare that human embryo experimentation results in the certain and sudden death of Mary Doe and, therefore, violates her Fourteenth Amendment rights to equal protection and the due process of law.

(d) That this Honorable Court issue and injunction against
the Defendants ordering them to cease and desist any and all plans to undertake human embryo (stem cell) experimentation.

(e) And for such other relief as to this Honorable Court may seem just and equitable.

\s\ R. Martin Palmer, Jr.
R. Martin Palmer, Jr., #03594
21 Summit Avenue
Hagerstown, Maryland 21740
(301) 790-0640

Dated: August 10, 1999

AN

AMERICAN DICTIONARY

OF THE

ENGLISH LANGUAGE;

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THE WHOLE VOCABULARY OF THE FIRST EDITION IN TWO VOLUMES QUARTO; THE ENTIRE CORRECTIONS AND IMPROVEMENTS OF THE SECOND EDITION IN TWO VOLUMES ROYAL OCTAVO;

TO WHICH IS PREFIXED

AN INTRODUCTORY DISSERTATION

ON THE

ORIGIN, HISTORY, AND CONNECTION, OF THE LANGUAGES OF WESTERN ASIA AND EUROPE,

WITH AN EXPLANATION

OF THE PRINCIPLES ON WHICH LANGUAGES ARE FORMED.

BY NOAH WEBSTER, LL. D.,

Member of the American Philosophical Society in Philadelphia; Fellow of the American Academy of Arts and Sciences in Massachusetts; Member of the Connecticut Academy of Arts and Sciences; Fellow of the Royal Society of Northern Antiquaries in Copenhagen; Member of the Connecticut Historical Society; Corresponding Member of the Historical Societies in Massachusetts, New York, and Georgia; of the Academy of Medicine in Philadelphia, and of the Columbian Institute in Washington; and Honorary Member of the Michigan Historical Society.

GENERAL SUBJECTS OF THIS WORK.

ETYMOLOGIES OF ENGLISH WORDS, DEDUCED FROM AN EXAMINATION AND COMPARISON OF WORDS OF CORRESPONDING ELEMENTS IN TWENTY LANGUAGES OF ASIA AND EUROPE.

THE TRUE ORTHOGRAPHY OF WORDS, AS CORRECTED BY THEIR ETYMOLOGIES.

PRONUNCIATION EXHIBITED AND MADE OBVIOUS BY THE DIVISION OF WORDS INTO SYLLABLES, BY ACCENTUATION, BY MARKING THE SOUNDS OF THE ACCENTED VOWELS, WHEN NECESSARY, OR BY GENERAL RULES.

DEFINITIONS AND DISCRIMINATING DEFINITIONS, ILLUSTRATED, WHEN DOUBTFUL OR OBSCURE, BY EXAMPLES OF THEIR USE, SELECTED FROM RESPECTABLE AUTHORS, OR BY FAMILIAR PHRASES OF UNDISPUTED AUTHORITY.

REVISED AND ENLARGED,

BY CHAUNCEY A. GOODRICH,

PROFESSOR IN YALE COLLEGE.

TO WHICH ARE ADDED VOCABULARIES OF SCRIPTURE, CLASSICAL, AND GEOGRAPHICAL NAMES.

SPRINGFIELD, MASS.

PUBLISHED BY GEORGE AND CHARLES MERRIAM,

CORNER OF MAIN AND STATE STREETS.

1857.

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AND SOLD BY ALL BOOKSELLERS.

the language of the eminent critic, "In its *Definitions* — in the choice for which pure and ... to ... work are made its stands without a rival in the annals of ... or lexicography." It also, without ... or condensation, are only given in this Dr. Webster's large work and are ... by any mere ... the words of the more limited plan. It contains THREE TIMES the number of ... and in any English Dictionary compiled in this country, or any abridgment of this ... a trifling advance ... price of other and limited works.

TESTIMONIALS.

... edition of WEBSTER'S DICTIONARY, in Crown Quarto, seems ... ing of general patronage, for the following reasons: —

... the results of the labors of this distinguished author, who ... himself in the preparation of the original edition for thirty-five ... devoted most of the twelve years following in revising and ... the standard edition.

... list of the authorities have added that of Professor C. ... for nearly three years of constant attention, assisted by ... other distinguished literateurs and the scientific ... results of the study of the author, as published in the Original ... Octavo, and the Revised Edition in Royal Octavo, together ... of Dr. Goodrich, are now given to the public in one of ... and most beautiful volumes ever issued from the American ...

... of the English language. It is superior to ... There may be a difference of opinion in regard ... some of the views of the author as to particular ... yet ... of the great body of English words ... treasury of knowledge. The definitions ... we regard as ... and full ...

... by the addition of all ... sufficient number ... added, while yet it is not ... to be admitted into ... of good English. ... Dr. Webster, which have ... which seem to be too ... have been judiciously ... have never wisely ... and of cases which ... to give the ... commended among the ... English and American people, ascertained by ... observation, inquiries, and correspondence. The artificial and ... pronunciation is avoided. The whole subject has been elaborated ... Professor Goodrich, whose professional duty it has been to train public speakers for thirty years. The variety of vowel sounds, which distinguishes the pronunciation of the English from that of the continental languages, cannot be accurately indicated by any figured key, without destroying its usefulness as a standard, and embarrassing, instead of guiding, the reader. As a guide to pronunciation, the Dictionary, in its present form, can best be consulted, and at the same time, is accurate and reliable in giving a just exhibition of the language as pronounced by educated men.

The Table of Scriptural Names has been carefully revised. The Classical Table has received large additions, and has been revised and corrected in some important particulars, in which the table of Walker is deficient and erroneous.

The List of Geographical Names is the most extensive that has ever been in connection with any English Dictionary, comprising, as it does, 12,000 to 13,000 names. The pronunciation, as given, by respelling the ... with figured vowels, is easily ascertained. By means of the ... different names, especially those of the continent of Europe, ...

... and valuable ... all who desire to possess ... DICTIONARY ... THE MOST ... OF THE ...

... Dodge

... Lewis

... Thomas H. Benton,

And thirty other members of the United States Senate.

... Millard Fillmore

* * *

BORN, (baurn) pp of BEAR. brought forth, as an animal. A very useful distinction is observed by good authors, who, in the sense of produced or brought forth, write this word *born*: but, in the sense of *carried*, write it *borne*. This difference of orthography renders obvious the difference of pronunciation.

1. *To be born*, is to be produced or brought into life. "Man is born to trouble". "A man is born a prince or a beggar", of before the mother or the ancestors. "Man that is born of woman is of few days and full of trouble.---Job XIV

2. *To be born, or born again*, is to be regenerated or renewed; to receive spiritual life. John iii

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE, MARYLAND

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vs.	)	
DONNA SHALALA, in her official capacity as Secretary of Health and Human Services; DEPARTMENT OF HEALTH AND HUMAN SERVICES; DR. HAROLD VARMUS, in his official capacity as Director of the National Institutes of Health; and NATIONAL INSTITUTES OF HEALTH, *Defendants.*	)	

MOTION TO RECUSE THE ORDINARY REQUIREMENT FOR THE APPOINTMENT OF GUARDIAN AD LITEM OR, IN THE ALTERNATIVE, TO APPOINT SUCH A GUARDIAN

COMES NOW, Mary Doe, by and through her attorney, R. Martin Palmer, Jr., and makes motion as follows:

1. That Mary Doe respectfully brings this action for declaratory and injunctive relief in her own name and in her own right under the "laws of nature and nature's God" and under the constitutional rights and laws of the United States of America where she has been born having been produced or brought into life in the United States.

2. That Mary Doe respectfully proffers that it would not be necessary in this particular case to appoint a guardian to represent her interests in addition to her attorney since Mary Doe's plea is for recognition of her equal humanity and entitlement to equal protection of the law; and there are no countervailing or conflicting interests requiring the appointment of a guardian.

3. That should the Court require in any event that a guardian be appointed, the National Association for the Advancement of Preborn Children respectfully offers to serve in that capacity; or should the Court require a larger "Celebrate Life" (Pro-Life) organization to serve in the capacity of guardian, it is respectfully suggested that the Court select one of the larger "Celebrate Life" national organizations to serve in that capacity.

4. That a Memorandum in Support of Plaintiff's Motion is attached hereto and made apart hereof.

\s\ R. Martin Palmer, Jr.
R. Martin Palmer, Jr., #03594
21 Summit Avenue
Hagerstown, Maryland 21740
(301) 790-0640

Dated: August 10, 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE, MARYLAND

MARY DOE, a human embryo "born" in the United States (and subsequently frozen in which state of cryo-preservation her life is presently suspended), all other frozen human embryos similarly situated; and the National Association for the Advancement of Preborn Children (NAAPC), *Plaintiffs,*	)	Civil Action No. PJM 99-2428
vs.	)	
DONNA SHALALA, in her official capacity as Secretary of Health and Human Services; DEPARTMENT OF HEALTH AND HUMAN SERVICES; DR. HAROLD VARMUS, in his official capacity as Director of the National Institutes of Health; and NATIONAL INSTITUTES OF HEALTH, *Defendants.*	)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO RECUSE THE ORDINARY REQUIREMENT FOR THE APPOINTMENT OF GUARDIAN AD LITEM OR, IN THE ALTERNATIVE, TO APPOINT SUCH A GUARDIAN

STATEMENT OF FACTS

Mary Doe is a human embryo "born" in the united States by virtue of her being "produced or brought into life" through the process of in vitro fertilization. (Definition of

"born": "to be produced or brought into life," as found in Webster's Dictionary, Complete and Unabridged, 1857 [pertinent pages of said dictionary attached hereto and made a part hereof, as Attachment A].)

Mary Doe is a being; and being human, she is a human being; she is 'person' and not "property" because she is the only property which has the property of building herself.

Mary Doe shares with all mankind equal humanity and personhood (as the term "person" is defined by Webster's 1857 dictionary [pertinent pages attached hereto and made a part hereof]) and is entitled to the equal protection of the law under the United States Constitution.

There are no countervailing or conflicting interests or rights to be considered as Mary Doe exists as a "child in vitro", *ex utero,* independently and as her own person. Nevertheless, should this Court require that a guardian ad litem be appointed for Mary Doe, the Court may surely do so in accordance with federal case law providing for the appointment of a guardian ad litem for infants.

DISCUSSION

I. Mary Doe, a *child in vitro,* has standing to assert her Constitutional rights on her own behalf.

A *child in vitro* has rights recognized in many areas of the Law. The issue becomes when a child *in utero* (and, by extension, a "child in vitro") is considered a "person" under the laws and Constitution of the United States. The Supreme Court held, in *Roe v. Wade,* 410 U.S. 113, 158 (1973), that the term "person" as used in the Fourteenth Amendment to the Constitution does not include children *in utero.* However, the rights of children *in utero* have been recognized in other areas of the law. The Supreme Court ruling in *Roe v. Wade, supra,* "does not mandate the conclusion that the fetus [or "child in vitro"] is a legal

nonentity." *O'Grady v. Brown,* 654 S.W. 2d 904, 910 (Mo. 1983) (term "person" as used in state wrongful death statute includes child in utero).

The issue in *Roe v. Wade, supra,* was abortion which necessarily dictates that the rights of the mother and the rights of her child *in utero* are in conflict. *O'Grady v. Brown, supra,* 654 S.W. 2d at 910. In the case at hand there are no rights or interests in conflict - the only issue is Mary Doe's own interest in her physical integrity. The federal courts have ruled that children *in utero* have no "legally protectable interests" vis-a-vis pregnant women (their mothers carrying them *in utero). Roe* v. *Casey,* 464 F. Supp. 483, 486-87 E.D.Pa. 1978), *aff'd,* 623 F.2d 829 (3rd Cir. 1980). Mary Doe's life is not threatened by her genetic mother but rather by the United States government, which values her more as a commodity or research tool rather than as the human being that she is. (She is a 'being' and being 'human', she is a human being; she is 'person' and not "property" because she is the only property which has the property of building herself.)

Mary Doe, as a person with legally protectable interests, has standing for purposes of the Article III "case or controversy" requirement, given the fact that, as a result of the recommendations of the Presidential Advisory Commission on July 13, 1999, she "personally has suffered some actual or *threatened* injury." *Heckler v. Mathews,* 465 U.S. 728, 738 (1984) (quoting *Gladstone Realtor v. Village* of *Bellwood,* 441 U.S. 91, 99 (1979) (emphasis added)). The recommendations of the Commission threatens to result in approval for federal funding of experimentation upon live human embryos, resulting in certain death for the "children in vitro." The threatened injury can be fairly traced to the challenged action of the defendants. *Simon v. Eastern Welfare Rights Organization,* 426 U.S. 26, 41 (1976).

Moreover, Mary Doe's interest (not to be killed in human embryo experimentation) is "likely to be redressed by the requested relief." *International Primate Protection*

League v. Administrators of Tulane Educational Fund, 500 U.S. 72, 77 (1991) (quoting *Allen v. Wright,* 468 U.S. 737, 751 (1984)). By declaring that Mary Doe, as a "child in vitro", has rights protected by the Fourteenth Amendment; declaring that those rights are violated when she is killed in the course of human embryo experimentation; and enjoining the current administration and the National Institutes of Health from future human embryo experimentation (stem cell research), the threat of injury to the physical integrity of Mary Doe and all others similarly situated will be eliminated and Mary Doe and all "children in vitro" will have available to them the loving option of adoption.

II. Mary Doe, a *child in vitro,* may sue in federal court upon appointment of a guardian *ad litem.*

Federal courts have the authority to "appoint a guardian *ad litem* for an infant or incompetent person not otherwise represented in an action[.]" Fed.R.Civ.P. 17(c). In many cases "the scope of [Rule 17(c)] has been extended to permit a court to appoint a guardian *ad litem* to represent the interests of unborn children." 6A C. wright, A. Miller & M. Kane, *Federal Practice Procedure,* section 1570 at 504 (1990) (emphasis added). In *Hatch v. Riggs National Bank,* 284 F. Supp. 396 (D.D.C. 1968) the court, on remand, appointed a guardian ad *litem* to protect interests of unborn heirs (this reaches back further than Mary Doe's existence as a *child in vitro,* since "unborn heirs" may not have even been conceived at the time of the court's appointment of a guardian *ad litem* to represent their interests). The holding of the court in *In re Joint Eastern & Southern District Asbestos Litigation,* 129 B.R. 710, 772 (E.D.N.Y. & S.D.N.Y. 1991) recognized that "[w]hen faced with a modification of a trust, courts have appointed legal representatives for unborn . . . trust beneficiaries" and that "[t]his equitable power has been invoked by other courts in class actions where member of the class were . . . unborn," *vacated on other grounds,* 982 R.2d 721 (2d Cir. 1992).

Most federal cases have addressed the appointment of a guardian *ad litem* for the protection of the financial interests of the unborn child, the rationale of such decisions inexorably leads to the conclusion that a guardian *ad litem* should be appointed by the court to protect the interest of the *child in vitro* as a shield from death. When a person (child *in utero)* cannot protect herself from harm, the court shall appoint a guardian *ad litem* in order to protect that person's interests. *See Wainwright v. Moore,* 374 So.2d 586, 588 (Fla.DCA 1979) (trial court erred in refusing to appoint a guardian *ad litem* for the unborn child of a prisoner, an expectant mother, who sought injunctive relief to allow her to keep her newborn child with her in prison for the first 18 months of the child's life). Mary Doe, as a "child in vitro" is threatened by human embryo experimentation and is not in a position to protect her rights to life, liberty and the pursuit of happiness, therefore, this court should, by its authority under Fed.R.Civ.P. 17 (c), appoint a guardian ad *litem* for Mary Doe in these proceedings.

III. The United States Supreme Court has held that the States have an interest in protecting children in being (which implicitly includes *children in vitro* at the point of viability.

Associate Supreme Court Justice Sandra Day O'Connor once opined that the law (constitutional law as enunciated by the Supreme Court) was on a collision course with science. Her words have proven prophetic.

Viability was defined by the Court as the ability to exist by natural or artificial means outside of the womb. Mary Doe does just that. She proves her viability to man by existing by natural or artificial means as a *child in vitro.* Indeed, she may be stored fully viable in liquid nitrogen for months or years, later thawed as fully viable and implanted in the womb of an adopting mother where she proceeds to grow, fully viable, and build herself as a *child in vitro* now transferred to a temple of the womb at which time we refer

to her as a "child in utero," (Mary Doe has not changed; just man's language for her has now changed) to eventually become the child who will get on the school bus for her first day of kindergarten, provided we are "kind" to her by not vivisecting her in human embryo experimentation and permit her to live to one day climb up on that bus for "kind"-ergarten.

IV. Viability -A Flexible Standard

In *Roe v. Wade, supra,* the Court held that a child *in utero* was not a person. They went on to hold, however, that a child *in utero* was to be considered viable at the point in time when it could live by "natural or artificial means outside the womb." Viability was further held to be the point in time that triggered the state's right to prohibit the killing of a child *in utero* except in the instance of protection of the life and health of the mother: "If the state is interested in protecting fetal life after viability, they may go so far as to proscribe abortion during that period, except when it is necessary to preserve the life and health of the mother." *Roe v. Wade* at 163-164.

There initially arose some confusion about this definition on the part of judges throughout the country who were called upon to interpret it as to whether or not viability was based upon a numerical number of months mentioned in the *Roe* case in discussing the viability concept or whether it was meant to be flexible. This question was answered in *Planned Parenthood* of *Central Missouri v. Danforth,* 428 U.S. 52 (1976), where the Court stated: "We recognized in *Roe* that viability was a matter of medical judgment, skill, and technical ability; and WE PRESERVE THE FLEXIBILITY OF THE TERM." *Danforth, supra,* 428 U.S. at 64 (emphasis added). (Science has since devised the "technical ability" of *in vitro* fertilization which allows for the viability of children *in vitro* and maintaining their viability by freezing in liquid nitrogen.)

The decision in *Colautti v. Franklin,* 439 U.S. 379 (1979) with its insistence upon a flexible determination of the viability of a child *in utero* poses an interesting question regarding biotechnological developments which have pushed the time frame of the ability to sustain life outside the womb by natural or artificial means all the way back to the moment of conception (fertilization) itself.

It is of further note that the "flexibility" preferred by the Court is not one intended to stretch only with time and place, as when freedom of speech in a nation at peace is contrasted with freedom of speech in a nation at war, or when the right of privacy in the seclusion of one's home is contrasted with the right of privacy in a public place. THIS FLEXIBILITY WAS ESTABLISHED SO THAT SCIENTIFIC ADVANCES, MORE QUIXOTIC AND MERCURIAL THAN THE LAW, MAY BE UTILIZED TO DELINEATE VIABILITY.

V. Evolution of the Court's Concept of Viability

Since *Roe v. Wade, supra,* we observed a gradual, quiet evolution in the Court's concept of viability. The Missouri Criminal Abortion Statute challenged in *Danforth, supra,* defined viable as "that stage of fetal development when the life of the Unborn child may be continued indefinitely outside the womb by natural or artificial supportive systems." The Court found that this definition did not conflict with *Roe's* use of the term viability. It is of note that the *Danforth* definition referred to contains "life" of the Unborn child, while *Roe* stated that only potential life was at issue (428 U.S. at 63 citing MO Ann. Stat. Section 188.05 (2) Vernon, 1974). This shift from potential life to continuing life occurred without any comment by the Court and indicates that the Court may implicitly be acknowledging that the child *in utero* (and *in vitro* - the two terms simply denote a change in location for Mary Doe) is alive. (Since new science precedes

new law addressing the realities of new scientific technology, the law is always waiting to catch up to science.)

Colautti contains more demonstrable evidence that the Court's thinking on the question of viability had indeed evolved. Blackmun mentioned in *Colautti* that, "the state has a compelling interest in the life or health of the fetus," rather than in the "potential" life of the fetus as described in *Roe*. More importantly, *Colautti's* definition of viability refers to the fetus as having "reasonable likelihood of . . . sustaining survival," while *Roe* referred to a fetus as being "potentially able to live." Reasoning this out, it follows that a fetus would be "potentially able to live" without having to be presently alive, but to speak of a fetus "surviving" implies that life already exists *in utero*, since in order to survive something must already be alive.

This switch to living inside the womb and surviving *ex utero* is on record in the *Anders v. Floyd*, 440 U.S. 445 (1979), remand, where the Court stated that viable "refers to potential, rather than actual survival of the fetus outside the womb." The high court had switched from the fetus being "potentially able to live" to the fetus being "potentially able to survive." One can infer that the Court is now admitting that the fetus is alive, something they declined to do in *Roe*. Thus the high court has admitted that the standard for viability must be flexible and must be construed according to scientific advances. Of course, the Supreme Court is long overdue in revisiting the question because in the intervening twenty years since *Anders v. Floyd* (1979) America's first test tube baby *(child in vitro)* has long since boarded the school bus and is now of age for college. If she chooses to attend law school one day, the Supreme Court would surely want her to read in a Supreme Court case that the Court now agrees that she (like Mary Doe) was alive and an equal member of humanity from the beginning when she first began her life as a *child in vitro*.

Alexander Pope said it:

> "a little learning is a dangerous thing; drink deep or touch not the Pyerian Spring."

Clearly, Supreme Court justices are not meant to have extensive medical backgrounds, nor do they have, at their disposal, the means or tradition of summonsing the greatest minds on an area of expertise that they are called upon to consider. They are limited in their deliberations by the printed record and medical or other journals available to them. The world dean of geneticists, Dr. Jerome Lejeune of Paris, France, testified before the United States Senate considering S. 158:

> **Dr. Lejeune. "Mr. Chairman and members, my name is Jerome Lejeune. I am a doctor in medicine and in science, and I am in charge of the mentally defective outpatients in the Hopital Des Enfants Malades - sick Children's Hospital of Paris.**
>
> **After spending 10 years in full-time research, I am professor of fundamental genetics at the University Rene Descartes.**
>
> **Some 23 years ago, I described the first chromosomal disease in our species, the extra chromosome number 21 typical of mongolism. For this work, I had the privilege of receiving the Kennedy Award from the late President and the William Allen Memorial Medal from the American Society of Human Genetics, and am a member of the American Academy of Arts and Sciences.**
>
> **When does a person begin? I will try to give the most precise answer to that question actually available to science. Modern biology teaches us that ancestors are united to their progeny by a continuous material link, for it is from the fertilization of the female cell - the ovum - by the male cell - the spermatozoa - that a new member of the species will emerge.**

Life has a very, very long history, but each individual has a very neat beginning - the moment of its conception.

The material link I was speaking about is the molecular thread of DNA. In each reproductive cell, this ribbon, roughly one meter long, is cut into pieces - 23 in our species - and each segment is so carefully coiled and packaged - like a magnetic tape in a minicassette - that under the microscope it appears like a little rod, a chromosome.

As soon as the 23 paternally derived chromosomes are united through, fertilization to the 23 maternally derived chromosomes, the full genetic information necessary and sufficient to express all the unborn qualities of the new individual is gathered. Exactly as the introduction of a minicassette into a tape recorder will allow the restitution of the symphony, the new being begins to express himself as soon as he has been conceived.

Natural science and the sciences of law speak the same language. Of an individual enjoying a robust health, a biologist would say he has a good constitution. Of a society developing itself harmoniously to the benefit of all its members, a legislator would say it has an equitable constitution.

A legislator could not conceive what a given law is before all its terms have been clearly and fully spelled out. But when this full information has been given, and when the law has been voted for, then it can help defining the terms of the constitution.

Nature works the same way. The chromosomes are the tables of the law of life, and when they have been gathered in the new being - the voting process is fertilization, itself - they fully spell out his personal constitution.

What is bewildering is the minuteness of the scripture. It is hard to believe, although beyond any possible doubt, that the whole genetic information necessary and sufficient to build our body and even our brain, the most powerful problem-solving device, even able to analyze the laws of the universe, could be epitomized so that its material substratum could fit neatly on the point of a needle.

Even more impressive, during the maturation of the the reproductive cells, the genetic information is reshuffled in so many ways that each conceptus receives an entirely original combination which has never occurred before and never again. Each conceptus is unique and thus irreplaceable.

Identical twins and true hermaphrodites are exceptions to that general rule: One man, one genetic make-up. But, interestingly enough, those exceptions have to take place at the time of conception. Later accidents could not lead to harmonious development.

All these facts were known long ago, and everybody was agreeing that test tube babies, if produced would demonstrate the autonomy of the conceptus over which the test tube has no title of property. Test tube babies now do exist.

If the ovum of a cow is fertilized by a bull's sperm, the tiny conceptus, floating freely in the liquid, starts immediately its cattle's career. Normally, it would travel for a week through the fallopian tube and reach the uterus. But thanks to modern technology, it can travel much farther, even across the ocean.

The best shipping equipment for such a 2-milligram cattle being is to introduce it inside the fallopian tube of a female rabbit. Air freight is much less for a rabbit than for a pregnant cow.

At destination, the minuscule animal is carefully removed and delicately settled inside the uterus of a recipient cow. Months after, the calf exhibits all the genetic endowment he received form its true parents - the donors of the ovum and of the sperm - but none of the qualities of its temporary container - the rabbit - and nor of it uterine foster mother.

How may cells are needed to build an individual? Very recent experiments spell out the answer. If very early conceptuses of mice are artificially disassembled, by a peculiar enzymatic system, their cells come apart. By mixing such suspensions of cells, coming from different embryos, one sees them reassembling again. If the tiny mass is then implanted into a recipient female, some little mice - very few indeed - manage to develop to term, completely normal.

As it was theoretically expected by Beatrice Mintz and demonstrated by Market and Peter, a chimeric mouse can derive from two or even three embryos, but no more. The maximum number of cells cooperating to the elaboration of an individual is three.

In full accordance with this empirical demonstration, which was available to science last year, the fertilized egg normally cleaves itself to two cells, one of them dividing again, thus forming the surprising odd number of three cells, encapsulated inside their protective bag, the zona pellucida.

INDIVIDUATION FOLLOWS SOON AFTER CONCEPTION

To the best of our actual knowledge, the prerequisite for individuation - that is, a stage containing three fundamental cells - is the next step following conception, minutes after it.

All this explains why drs. Edwards and Steptoe in England could witness in vitro the fertilization of a ripe ovum from Mrs. Brown by a spermatozoa from her husband, Mr. Brown. The tiny conceptus they were implanting days later in the womb of Mrs. Brown could not be a tumor or an animal. It was, in fact, the incredibly young Louise Brown, now 3 years old.

The viability of a conceptus is extraordinary.

Experimentally, a mouse conceptus can be deep frozen - even down to 269 degrees - and after careful thawing implanted successfully.

For further growth, only a recipient uterine mucosa can supply to the embryonic placenta - which is made by the embryo - the appropriate nutriments.

In his life capsule, the amniotic bag, the early being is just as viable as an astronaut on the Moon in his space suit. Refueling with vital fluids is required from the mothership. This nurture is indispensable for survival, but it does not make the baby, no more than the most sophisticated space shuttle could produce an astronaut. Such a comparison becomes event more cogent when the fetus moves.

We know now what the fetus feels. We have listened to what he hears, we have smelled what he tastes, and we have really seen him dancing full of grace and youth. Science has turned the fairy tale of Tom Thumb into a true story -the one each of us has lived in the womb of his mother.

And to let you measure how precise the detection can be - if, at the very beginning, just after conception, days before implantation a single cell was removed from that little berry-looking individual, we could cultivate that cell and examine its chromosomes. If a student, looking at it under the microscope, could not recognize the

number, the shape, and the banding pattern of those chromosome, if he was not able to tell safely whether it comes from a chimpanzee being or from a human being, he would fail in his examination.

To accept the fact that after fertilization has taken place a new human has come into being is no longer a matter of taste or of opinion. The human nature of the human being from conception to old age is not a metaphysical contention, it is plain experimental evidence.

Thank you."

Dr. Lejeune, the world dean of geneticists, was professor of fundamental genetics at the Rene Descartes University of Paris. He was a member of the American Academy of Arts and Sciences (U.S.), a member of the Royal Society of Medicine in London, the Royal Society of Science in Stockholm, and other world societies of medicine. He received from President Kennedy's hand our nation's highest award for isolating the X-21 chromosome and discovering the chromosomal basis of Mongolism (Trisomy 21). Dr. Lejeune was to the world of genetics as Einstein was to world of physics. His insights have become to the deliberations of our state legislators, courts and the U.S. Supreme Court as the letter that Albert Einstein wrote to President Roosevelt regarding a new discovery on the splitting of the atom was to the future of energy. Dr. Lejeune's understandings have figuratively split the atom of the humanity of the *child in vitro,* and in so doing have released the tremendous energy of truth which is circling the globe and has captivated the United States Congress, which itself has banned all federal funds for human embryo experimentation.

That just as man was given new respect for the atom, so man is now humbled in awe before the startling revelations of the very beginnings of human life - a human embryo of a three-cell stage, which would fit on the tip of a needle and yet contains more information, perfectly

organized, than would fit in one million NASA computers and which is differentiated as the constitution of this exact new human being immediately following fertilization - all information necessary to completely build herself, even the marvel of the human brain, capable of going to the moon, and putting foot on the moon, or capable of building a NASA computer. Dr. Lejeune's reflections are based upon science, but it is science telling man a love story, for just as the splitting of the atom releases incredible energy and light, so man's splitting of the kernel of truth of the early beginnings of his own life has released a trillion-fold amount of energy and light and illuminated the source of that light, which is the real energy source of the entire universe: LOVE. The greatest force of the universe is and always will be LOVE. We must LOVE Mary Doe as we love ourselves.

The Child *In vitro*

Why has the newly devised technique of *in vitro* fertilization proven viability at the moment of conception beyond a shadow of a doubt? Because the new human life is conceived in a Petri dish, outside the womb, is then incubated for 48 hours, and during this period of time must of accord fulfill and prove to man all of his questions about its viability to have meaningful, independent life and to grow (cell division is taking place during this 48 hour period.) Many other processes that man cannot even perceive or know with his present knowledge take place during this 48 hour incubation period. We know them only by words such as chromosomes and DNA at the close of the twentieth century.

What we do know is that this is why Oliver Wendell Holmes stated: "a man is a man is a man."

Dr. Jerome Lejeune put it this way:

"Instead of recognizing human dignity from the dawn of life, certain theoreticians require a waiting period that is all the longer as their intentions are less pure. But in the course of existence, moralists prolong this respect all the more as their aspirations are the more noble. [The Declaration of Independence and Constitution of the United States of America are such noble documents.]

How long a life is necessary to accomplish one's destiny?

How much time does it take to make a man?

Napoleon said that twenty years were necessary, but he meant conscripts that one could send to war.

A whole lifetime, at least, said a philosopher . . . and then eternity, adds the believer.

Different views on the duration, but when is the beginning?

For all living beings that arise from sexual reproduction, each new being begins when information coming from the father with the sperm comes upon the information coming from the mother in the egg. As no other information will enter later on into the zygote, the fertilized egg, one is forced to admit that all the necessary and sufficient information to define that particular creature is found together at fertilization. [See Dr. Lejeune's paper entitled, "Is There A Natural Morality?", attached hereto and made a part hereof, as Attachment B, which explains the earliest beginnings of all of us.].

There is no living matter. Matter cannot live and cannot reproduce.

There exists only animated matter, animated by a message that is life, that makes life. And if

that message is a human message, that life is a human life.

Those elementary notions that one teaches in all of the schools have an immediate significance for all society. They are foundational for the respect due to a human being, defining it clearly. They bring out in the open, by this, bad intentions and all the forms of racism, whether chronological, sociological or eugenic.

All human beings merit respect without regard for age, weight, size, health, performance or color, one sole quality counts: being a member of our species."

DR. JEROME LEJEUNE, *How Much Time To Make A Man?.*

Dr. Lejeune, the world dean of geneticists, died in 1994. He left us these final words in his essay entitled, "From the Palace of the Child to the Procreative Industry", which proved prophetic for our time and indeed is exactly on point with the court's consideration of the instant case:

"Transitory orphan, two or three days in an incubator, or years in suspended time, the *in vitro* embryo is totally dependent on the functioning of the apparatus and the goodwill of the person supervising the freezing. This latter is invested with parental power, which he alone has the power to exercise!

The opposite of all of this is the infant conceived in the body of his mother, who finds protection where he finds himself. Not only is the uterus an incomparably better equipped chemical and physiological shelter than the most advanced laboratory, but this secret temple is the sole place truly worthy of the birth of a new human being. Intelligent fortress, his mother, an intelligent fortress, protects him from everything except, alas, herself.

This obvious fact is inscribed most profoundly in us and is expressed in language, or better in ideograms, just as it was revealed to me by a little missionary sister near Fukuyama. Giving a talk on genetics for the benefit of the young girls entrusted to the community, I had employed the paraphrase "secret temple" to refer to the feminine genital organ. The mother superior asked through the translator if I know how uterus was written: ski-kyu in Japanese. 'Tell him,' she said, 'that it is a question of two 'conjis': *ski,* which means infant, and *kyu,* which means palace.'

When the written language is truly descriptive, it approaches poetry, the expression of the experience of the real. The womb of the mother is truly the palace of the infant. The refrigerated container, the 'concentration can', will never be called the palace of the infant in any language in the world, unless it is the 'brave new world' feared by Aldous Huxley. This strictly technological society, where babies were being made in bottle, was liberated from all taboos. In this 'best of all – worlds', all of foul words, all of the obscene acts were in current usage and even taught to infants. However, the publishers were obliged to reprint all the literature to expurgate an incongruity, which could be neither pronounced nor read. That word, replaced from then on by an ellipsis, was the word *mother.*

When the 'palace of the infant' is definitively supplanted by the reproductive factory, then maternity itself becomes an obscenity - Huxley warned us of this.

With a presentiment of the dangers of the civilization of pleasure and efficiency, Goethe, 150 years ago, has seen even further.

In the first *Faust,* the beloved, seduced, is abandoned with her infant, which she kills: the damnation of Doctor Faust is the tragedy of aborted

love. But in the second *Faust*, the one that is rarely read, Goethe sees into the future.

After the death of Marguerite, Faust, always accompanied by his diabolic companion, returns to his laboratory. He finds his former assistant there, Doctor Vagner fabricating a homunculus in an alchemical flask. The flask tingles and vibrates, a strange creature escapes from it and greets Mephistopheles, calling him his cousin. Guided by this imaginary baby, Faust goes back in time and dreams of an impossible liaison with the phantom of Helen of Troy.

At the end of this powerful drama, the magic of Mephistopheles has produced an exclusively technical and rationalized modern society. Faust gives his two last orders: that the little bell in the old chapel, the only one that still sounds in his powerful empire, remain silent, and that the cabin where Philemon and Baucis still live be removed to enlarge the majestic canal from which the wealth flows.

When Mephisto returns, having burned the two old lovers in their cabin, when the silence weighs on him, when the last vestiges of human love an divine love are destroyed at the same time, anxiety creeps into the soul of Doctor Faust.

Visionaries are not scientific, but they scrutinize the hearts of men. To make children in bottles, to model them after our own fashion, is that not the temptation of absolute pride: to be able finally to proclaim that man is made in our image!

This formidable illusion would be, nevertheless, of short duration. Man would certainly like to bend everything to his caprices, but much against his liking, he remains fundamentally moral, and even moralizing. Do what he will, he attempts to justify his conduct, and if he cannot manage that, he changes the meaning of the words, in the absence of control

over the rules of the game. For example, morality has recently been exchanged for ethics. Not that these two notions truly differ. But listen to what is being said nowadays: those who speak of morality refer to a law superior to themselves, to which behavior should conform, at the same time that those who speak of ethics proclaim to the contrary that the law should conform to behavior.

By carefully selecting their experts, the political authorities will secure that their committees suggest new laws that, once passed, will have influence on behavior, which will in turn influence the laws to come. With a little adroitness and the appearance of pluralism, the Good and the Bad will be the product of the state's ethic. [That doctrine, with variable content, has recently been the object of *From Ethics* to *Law. Study of the National Council,* French documentation, 1988.]

But that route has no future. Our domination over nature increases inexorably. We become more powerful every day, and every day our anxiety will increase. It will be necessary to find *a* norm again, a standard with which to judge, because even when decreed by a legally constituted assembly, 'the law does not have all the rights'? [Varuat, in *The Possible and the Forbidden,* 1990.] Who will tell us, that one or another experiment is 'morally necessary and necessarily immoral' to take up a celebrated remark, or that it is 'morally useless and uselessly immoral', as common good sense?

The cleverest discussions can change nothing. The ethical committees will solemnly proclaim their contradictory oracles and the anxiety will remain: technology is cumulative, wisdom is not.

Then what remains for us?
Wisdom remains for us.

If the technicians fail to recognize this, we have everything to fear from a denatured biology, but if the physicians remember it, the most sophisticated technology will remain at the service of the family of man.

In unforgettable wisdom that summarizes in a single phrase, the standard by which all will be judged:

What you have done to the least of my brothers, you have done to me." [Matthew 25:40].

DR. JEROME LEJEUNE, *From the Palace* of *the Child* to *the Procreative Industry,* (1988).

CONCLUSION

Mary Doe is a "child in vitro" who has all the rights and interests of any other human being "produced or brought into life" in the United States. Every human being began their life at the same point that Mary Doe is frozen at right now in her still young life. To deny Mary Doe the capacity and standing to sue in federal court to protect her interests in her own existence and physical integrity against the governmental funding of her destruction as a human being would be to deny the origins of humanity and cast aspersions on our system of justice.

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Dated: August 10, 1999

"Attachment B" To Plaintiff's Memorandum of Law
in Support of Motion to Recuse the Ordinary Requirement
for the Appointment of Guardian ad litem or,
in the Alternative, to Appoint such
a Guardian

Is There a Natural,Morality?
by Prof. Jerome Lejeune

1. The Animation of Matter

In his quest for the truth, the biologist comes upon a two-fold evidence at the two extremes of the development of a human being. This evidence is clear: spirit animates matter.

First of all, take the macro and micro structure of the brain, from the most complex connecting network that we presently know on earth (measuring 200,000 kilometers in length, if one calculates in neurotubules) to that extraordinary play of synapses which causes a flow of particles to be engulfed by the receptive membrane when a vesicule bursts and emits a chemical mediator.

Curiously, our machine for eliminating the fortuitous and keeping only the deducible, mark of reason, is a computer of particles with an incredible velocity. In the synapsis itself, particles pass one at a time into each of the channels. Maxwell's demon (imp?) is at the bottom of this system which deciphers and puts order in the universe.

Most wonderfully, the least thouqht triggers this flow of ions and this extraordinary counting of particles. Spirit truly animates matter.

At the very outset, when a being begins its carrier, it is the genetic information which, accidents apart, dictates all its qualities. According to the felicitous formula of the mathematicians, the being called to life is

reduced to its simplest expression.[1] The language is, of course, extremely miniaturized. In the head of a spermatozoid, there is a linear meter of DNA. If one brought together all the DNA molecules which will define each and every quality of each and every one of the five billion men who will replace us on this planet, the amount of matter would be about equal to two aspirin tablets.

What we know, beyond any possible doubt, is that all the necessary and sufficient information is present from fecundation, that is, from the moment when the information carried by the spermatozoid and that carried by the ovule are joined in the fertilized egg.

This idea that spirit animates matter is, in a way, inscribed in our very language. We use the same word for an idea that comes to mind and for a new being coming into existence. In both cases, we speak of conception. This is not a poverty of our vocabulary but implicit recognition, if I may put it so, that at the very beginning, soul and body, spirit and matter, are so interlocked that it is impossible to speak of one without the other. And language never has.

This leads us to consider the biologist's first responsibility: to explain to his contemporaries that molecular biology wholly excludes Cartesian Dualism according to which there is spirit on one side and body on the other. Living matter does not exist; there is only animated body, but animated by the nature of man.

A question immediately suggests itself. Are there Instructions for Use of this human nature? Is there a natural morality? Were I to express my thoughts very respectfully,

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1 Note that "essence" precedes "existence" here. Indeed, the coded message of DNA will be transcribed in RNA which will then be spliced. Secondarily, proteins which are the machine tools of the cell, will be constructed in conformity with the code of the messenger RNA. Given the translation machine (the cytoplasm) on the one hand and the DNA formula on the other, one could know exactly the "essence" of the new being even before it is expressed, that is, even before "existence" of its properties is recognizable.

if a bit abruptly, I would say that the Decalogue is the user's manual and the Commandments of the Church the instructions for maintenance for human nature.

But one would first of all have to establish that human nature does indeed exist. This is fiercely debated. Talk of human nature is not fashionable nowadays and, not too long ago, it was pretended to be demonstrated that the human condition was, in fact, only a kind of convention admitted by one society, but different for another, with no way of knowing which was good.

If there is a natural morality, it would be wise to conform to it not in order to direct science (for natural morality is itself an object of science), but rather to direct the uses of science and to decide about the technical applications of our knowledge, and how to put it to good use. Science is indeed the Tree of Good and Evil. It provides both good and bad fruits. Our whole responsibility as scientists is to collect the good fruits and not to offer the bad ones to our contemporaries and our descendants.

2. From Human Nature to Natural Morality

Of course it is difficult to define human nature; nonetheless, we must try to grasp what it is. For a geneticist like myself, the first step is simply to say, "Well, we know with certainty that this enormous genetic message, 10^{11} of bases in DNA, corresponds to a phenomenal quantity of information. Moreover, we know that it is because the conceived being has this information that it is human. In other words, the most modern and objective molecular genetics can be epitomized in a rough paraphrase of the beginning of St. John's Gospel. "At the beginning there is a message. This message is in life and this message is life; and if this message is a human message, then, this life is a human life." Of course, one must decipher this message and that is already underway, but it is not necessary to get into

overly technical details on how to read these extraordinary Tables of the Law of life which are inscribed in our DNA.

It would, however, be quite insufficient to consider only DNA. DNA is like a magnetic tape on which the symphony of life *is* inscribed, but it must never be forgotten that the rest of the fertilized cell is like the magnetophone which will decipher the code and play the symphony. When we speak of the quantity of information expressed in bits, this is not only what is inscribed on the tape, but also what is involved in the machinery that reads the ribbon and executes what it means.

Then it is not only some 10^{10} to 10^{13} bits that are involved, but an absolutely enormous number which at present no one can state precisely.[2]

The first notion, then, is a genetic definition of the being. For the second notion we must return to our opening remarks on the brain. One need only remove the cranial dome to find in man the frontal areas and the Broca and Wernicke zones that are absent from the primates. These zones are necessary for articulate speech and coherent thought.

Without getting into comparative neuroanatomy, one can perhaps make a rough but nonetheless quite convincing observation. I travel a lot and no matter where I go there are two extremely instructive places I like to visit -- the university and the zoo. In the universities, I have frequently met eminent colleagues who shake their learned heads and wonder if, when all is said and done, their

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2 Even if one day this enormous number were estimated (and there is no theoretical reason why it cannot be), there would remain the great difficulty left unsolved by the theory of information. When the length of a message has been measured, one has in no wise measured its "signification." To repeat without error such variants as "bla bla bla," "ran tan plan," and other, "ron et ron petit patapon," could require a quantity of information equal to a sonnet of Petrarch! The "quantity" of information in the DNA of a chimpanzee is comparable to that in the DNA of man, yet it is quite certain that the DNA of man tells something more: since man speaks.

children when very young were not some kind of animals. But at the zoo, I have never seen a meeting of chimpanzees asking themselves, when all is done (and not said!) whether their children would not some day grow up into University members!

About a zoo, why not go in Australia? Down there you would meet rather stupid bipedal creatures for whom aborting their babies looks perfectly natural--I mean the kangaroos--and more precisely the King Kangaroos, roughly the size of a man. At two months of age, the baby King, two centimeters long, is aborted. He looks like a little sausage with one claw on each of his rudimentary limbs. He does not know where the maternal pouch is, (nor whether it exists at all) but he feels gravity. He climbs right up in the fur, and if the mother kangaroo stands still he will not fail to reach the pouch and fall inside it. Then, comfortably, he will suck a tiny nipple and grow for her another seven months.

The remarkable thing is that the mother kangaroo will let him do so. She would not allow any other being to accommodate itself in her pouch! Obviously the recognition of the tiny sausage as a kangaroo being is somehow written in her nervous system.

If nature has taken the trouble of wiring the meager brain of a mother kangaroo, so that she could recognize the "kangarooiness" of the little kangaroo, I cannot believe that with their one and a half liter brain, the scholars have not been endowed with the faculty of recognizing the human dignity of the tiniest humans!

For my part, I conclude that human nature is evident to all. On this planet, man is the only creature who asks himself whence he comes, who he is. He is also the only one to have discovered, (and this from the beginning) that there is a connection between the passion of love and the reproduction of his kind. The most gifted or the best trained chimpanzee never has nor ever will know that there is a connection between copulation and the appearance nine

months later of a little ape who resembles him. Man has always known that Pagans quite rightly represented the god of love in the form of a child. This peculiarity, this knowledge which is, as it were, genetically inscribed in the heart of man, gives to his behavior, and especially to his amorous behavior, a dignity that does not exist in the rest of the life world.

If one agrees that there can exist a natural morality, it follows immediately that to dissociate love of the child and the child of love is an error in method. Hence the quite natural prescription of continual abstinence in the chaste celibate and periodic continence in the happy marriage. If monogamy indeed corresponds to human nature and if morality reserves to the husband the prerogative of being the only one authorized to deposit reproductive cells in the inner temple that is the wife's body, one then arrives quite simply at fundamental moral notions. Contraception, which is making love without making babies; extracorporeal fecundation which is making the baby without making love; abortion, which is unmaking the baby; and pornography, which is unmaking love are not in keeping with the natural dignity of man.[3]

When technology gives us control over the very young human being, over the embryo which can be formed in a quasi-alchemical phial, and even brought back from a frozen state, this natural morality teaches us that young as he might be, as fragile as he might be, the human embryo is

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3 The mocking remark that morality is ill placed in the bottom of panties exhibits ignorance of neuroanatomy. The cerebral projection of the genital organs is at the upper extremity of Rolando fissure in the interhemispheric surface, very close to the limbic system. That is to say, the genital is the only corporal representation to be in contact with the center of the emotions that move us: those which aim at preservation of the being (hunger, thirst, aggression) and the preservation of the species (reproduction, protection of the young, love). It follows that we are so made that whatever concerns the genital directly involves the moral, neurologically speaking. Hence the impossibility of mastering emotive behavior if the will does not command also, and perhaps first of all, conscious and deliberate genital behavior.

member of our species and by that fact ought to be protected from all exploitation. He is not a stock of spare parts to be drawn on at need. He is not a commodity to be frozen and unfrozen at will. He is not a consumer good for sale or exchange. He is quite precisely our neighbor, our likeness, our brother.

3. Stumbling Block or Sagequard?

It must now be asked if this morality, unchanged throughout time, amounts to an embarrassment for research. That is, is it an unfortunate taboo or, on the contrary, a precious guide? I would not pretend to give an a priori answer. Rather I will examine three examples.

A. Respect of the Couple

The conjugal act is the only natural mode of depositing male reproductive cells into the feminine body, through the union of two persons. This physical union which alone renders valid and definitive the engagement of the persons is a desired and deliberated act of the spouses.

Fecundation of the ovule by the sperm, will eventually take place hours later, but the fusion of the reproductive cells is then a consequence of body physiology and is beyond the conscious and deliberate control of the spouses.

There is a fundamental difference between carrying in the male gametes (by union of the persons, *i.e.*, the act of love, truly speaking) and the fecundation of the ovule (at the cellular level). As a consequence, if the technician carries the gametes he substitutes himself for the husband and, through a syringe, he achieves the act naturally reserved to the union of the persons. In this sense, there is substitutio personarum.

On the contrary, when the technician suppresses an obstacle preventing the fusion of the reproductive cells or alleviates an hormonal difficulty or anything else

hampering fertility, he achieves adjutorium naturae which is the very purpose of medicine.

This operational distinction, which is in full accordance with the Vatican instruction Donum vitae, is not at all academic. May I take the liberty of quoting a woman having just had her embryo transferred after extracorporeal fecundation. It is a little shocking possibly, but how enlightening. The anesthesiologist, the biologist and the gynecologists had performed the procedure in a respectful atmosphere accommodated with soft music. Instants later, to her troubled husband asking the thing happened, the would-be mother answered abruptly, "I made love with the three!"

A realistic, or more precisely a surrealistic description (that onlya woman could discover) of the substitutio personarum we were discussing previously!

It remains to be remarked that consequences of extracorporeal fecundation are frightening for the human embryo - the technician who fosters him for two or three days in the incubator or deep freezes him for years in liquid nitrogen, is, in fact, the only person having truly parental power over him. Hence all the dangers of exploitation, all the perverse abuses already invented or yet unimaginable!

Conversely, the child conceived in corpore materno is protected from all these attacks, by the very place of his conception. The womb is not only a shelter incomparably better equipped chemically and physiologically than the most sophisticated laboratory, but this secret temple is also possibly the only place really designed for the coming into the world of a new human being, committed to eternity.

The term secret temple is not pure metaphoric poetry, I learned Japan. The Reverend Mother of charming sisters near Hiroshima taught me that in Chinese script, the uterus is defined by two "conjis." One means "shrine," the other means "concealed." When men try to tell the true story, no matter if they speak French, English or Japanese,

when it comes to figuring out the place of the beginning of life's adventure, they reach two concepts: secret and sacred.

If I can propose an opinion, I would surmise that the long trip outside the mother's body implied by in vitro fertilization, is not a favorable solution. Progress in adjuorium naturae will soon make it an obsolete, undesirable and unnecessary complication. Two schools will appear: The one will fight sterility by plastics, grafts, molecular biology or what have you; the other will obstinately pursue extracorporeal fecundation. But its avowed purpose will no longer be the fight against infertility but an arbitrary dominion over human destiny.

B. Respect of the Embryo

By respect of the embryo I mean the human embryo. Is this a taboo that retards research? I don't think so. The history of the past three years is very illuminating on this score. Three years ago, our colleagues in England tried to get a law enacted that would permit the experimental use of human embryos not yet 14 days old. I had the honor of appearing before the British Parliament to give a geneticist's opinion. What had been proposed was this:

> If you give us the right to use 14-day old embryos, we will study different illnesses and obtain knowledge leading perhaps to a cure for mental retardation, cystic fibrosis of the pancreas, muscular dystrophy, Trisomy 21, and hemophilia.

In my testimony I was obliged to remark in a quite matter of fact way that one could not study in a 14-day old embryo a disorder in a brain that had not yet formed, nor difficulties of blood coagulation (e.g., hemophilia) because the organs which form blood cells are not yet differentiated,

nor an anomaly of the muscles which will appear only a week later.

Finally, the project in no way enabled one to elaborate a logical basis for saying these experiments are scientifically necessary and absolutely indispensable for the study of the five diseases. I can tell you - and this is amusing - that this extremely simple intervention was very badly received. The scientific weekly, Nature, entitled it "A French Influence in Britain." Something shocking. Nature went so far as to promise a free subscription to anyone who would provide a research project demonstrating the falsity of what I had said. That was three years ago. Nature has published no such thing and, to my knowledge, no one has received free that excellent scientific publication.

The truth is that it was not necessary to manipulate human beings. For in the course of these years, the gene of cystic fibrosis has been discovered. The gene of muscular dystrophy has been cloned and the protein it makes, dystrophine, is now known. Great progress has been made in the understanding of Trisomy 21 and hemophilia. Genetic engineering has made the anti-hemophiliac factor in artificially controlled bacteria, blocking one possible means of transmission of AIDS. All this without harming the life of a single premature human being. But what about frozen embryos? They are accumulated by thousands in a crowded deep freeze tank. The low temperature brings time to a stand still! How is it called in history, this hopelessness of arrested people, concentrated in a hostile place where even the time was also arrested? Do you remember some half a century ago?

Today, people are questioning what to do with frozen embryos. Kill them? Or keep them for experimental benefit? These same questions were asked fifty years ago.

The only answer is very simple. Concentration camps must be forever strictly verboten.

At this point, let me simply quote a phrase from our colleagues of the Max Planck Institute who wrote (in Nature):

> "The abuse of these techniques through experiments with human embryos (and pre-embryos if one considers a pre- implantation embryo not to be an embryo), must be condemned by the scientific community.

This declaration appeared a few months ago and I take comfort from the thought that the scientists in a country where the denatured doctrine of the Nazis was once enforced by the law, are restoring dignity to biology. As an honest servant of medicine, biology must be at the service of the patient, and must never again treat him as an experimental animal.

C. The respect of Mankind

If respect for human nature is not an obstacle to research, is it a safeguard? I tend to think so. I will take a very recent example under discussion at the present time - the abortive pill, RU 486. It is an anti-progesterone, a false key that blocks the site on which progesterone, the hormone indispensable for the progress of the pregnancy, normally acts. In technical terms, this product is called Mifepristone; in practical terms, it is the first specialized anti-human pesticide. One can imagine, without any mistake in reckoning, that if this product is industrially manufactured it will kill each year more human beings than were killed by Hitler, Stalin, and Mao Tse Tung combined.

To eliminate the extremely young humans by a binary ammunition (anti-progesterone for poisoning and prostagladine for expulsing) is precisely the beginning of chemical warfare against humanity!

4. The Way, the Truth and the Life

There remains, however, another question. Our power grows daily. We are going to make new beings (bacteria, vegetable, animals) by ways other than by natural or artificial selection. By that very fact we are certainly going to modify the destiny of man before he perhaps modifies himself. I do not know if we shall be able, during our lifetime, to modify the human brain, but no one can show that this will always be impossible. In short, we are going to become more and more powerful. The biological bomb is probably more dangerous for humanity than the thermo-nuclear bomb. Then we will indeed require something to guide us. It will be necessary to establish or rediscover a term of reference. Who can tell whether this will be good or bad? Who will teach us that?

In my profession as physician and geneticist, such questions arise every day. Of course, there are always some who suggest that we alter morality whenever any innovation seems to require it or a disruption of the mores suggests it. This method has no future because it cannot surmount the decisive difficulty: "Technology is cumulative, wisdom is not."

So what are we left with? Wisdom itself: What you have done to the smallest of mine you have done unto Me. If specialists remember that, science will remain the honest servant of the human family but, if they forget it, if they forget that there exists above all a supernatural morality everything could be feared from a denatured biology.

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Notes

To amplify minisatellites, oligonucleotide primers from unique segment DNA flanking a minisatellite are used to drive the amplification of the entire block of minisatellite repeat units. The size of the PCR product is therefore determined by the allelic number of minisatellite repeat units. PCR products are subsequently detected by Southern blot hybridization with a minisatellite probe.

Faithful amplification of minisatellite alleles up to 5-15 kb long can be achieved. However, fidelity is lost at high

numbers of PCR amplification cycles due to out-of-register annealing of minisatellite DNA strands at high concentration of PCR product, resulting in the profile degenerating into a heterodisperse smear of PCR products. For this reason, visualization of PCR products by hybridization is adviseable, although with careful control of PCR cycle numbers it is possible to amplify alleles up to 5kb long to the point where they can be directly visualized by electrophoresis on an ethidium bromide-stained agarose gel (A.J. Jeffreys, R. Neumann and J.A.L. Armour, unpublished data; see also Boerwinkle et al. 1989; Horn et al. 1989).

Since the PCR reaction is best terminated during the early exponential phase of accumulation of product, there should be little or no interference between different loci being amplified. In practice, at least six different minisatellites can be simultaneously or sequentially detected with appropriate locus-specific minisatellite probes. Simultaneous detection produces a PCR-derived DNA "fingerprint" (Fig. 4) which can be readily obtained from as little as 1ng genomic DNA and which shows a good degree of individual specificity (the chance of false association between unrelated people is estimated at approximately 2x 10(-5) for the six minisatellite loci so far developed for PCR amplification).

PCR is also capable of amplifying single minisatellite molecules and analysing single human cells (Jeffreys et al. 1988b). However, during the large number of amplification cycles needed to produce sufficient PCR product for detection, some loci show, in addition to bona fide amplification products generated during PCR. Another significant problem in our experience is the advertant contamination of PCR reactions with minute traces of recombinant DNA or the products of previous PCR reactions. Nevertheless, individual identification based on DNA analysis at the level of one or a few cells is a feasible proposition.

Whith the greatly improved sensitivity provided by PCR, individual specific DNA typing systems can be extended to the analysis of minute samples such as hair roots, 0.01-0.001ul blood stains, urine, submicrolitre amounts of saliva and microscopic traces of semen. Another advantage is that crude cell lysates can be subjected to PCR (Li et al, 1988; Jeffreys et al. 1988b), obviating the need for purifying DNA.

Mapping variant minisatellite repeats

Even the most variable human microsatellites seldom show complete uniformity of repeat sequences in all alleles. Instead, variant repeat units are frequently present, often intermingled with the "normal" repeat units throughout the allele (Jeffreys et al. 1985a; Wong et al. 1986). Using PCR to amplify minisatellite alleles following by end-labeling of the PCR product and partial restriction endonuclease digestion of repeat units, it is possible to explore this internal variation as a new source of microsatellite variability. Examples of this analysis of internal variation in different amplified alleles from the hypervariable locus detected by minisatellite clone AMS32 are shown in Fig. 6. Restriction enzyme HINs1 cuts every 29 base pair repeat unit to produce a continuous ladder of labelled DNA fragments. The absolute number of repeat units per allele can therefore be established, without reference to molecular weight standards or control DNA samples. In contrast, HaeIII only cleaves at a variant repeat unit which, on average, accounts for approximately 70% of all repeat units. As a result, the ladder produced by HaeIII is discontinuous. For any allele, comparison for the continuous Hinf1 ladder and discontinuous HaeIII ladder allows each repeat unit to be classified as to whether or not it is cut by HaeIII, resulting in an unambiguous binary string encoding the number of repeats and location of variant repeats along the allele. In principle, up to 1060

different alleles at the locus detected by AMS32 could be distinguished by using this system, in contrast to approximately 100 alleles by conventional gel electrophoresis and Southern blot hybridization. In addition, alleles are distinguished by an unambiguous binary code, rather than by estimated molecular weight (with attendant error margins). It remains to be seen whether such an allele coding system can be technically simplified to the point where it can be routinely used in forensic analysis to establish matches between alleles in a suspect forensic specimen without the need to estimate allele sizes or to provide side-by-side electrophoretic comparisons of DNA from the suspect and the forensic sample.

ACKNOWLEDGEMENTS

A.J.J. is a Lister Institute Research Fellow and the work was supported by grants from the Medical Research Council. J.A.L.A. is a M.R.C. Training Fellow. The minisatellite probes and the work described herein are the subjects of Patent Applications. Commercial inquiries should be addressed to ICI Diagnostics, Rudheath, Northwich, Cheshire, CW9 7RA, U.K.

STATEMENT
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BEFORE THE SENATE APPROPRIATIONS COMMITTEE
ON LABOR, HEALTH
AND HUMAN SERVICES
November 4,1999

Mr. Chairman and Members
of the Appropriations Subcommittee:

Thank you for the opportunity of participating in this hearing concerning the controversial ethical issue of research on human embryos to optimize the procedures for harvesting embryonic stem cells and the federal funding of research on stem cells derived from human embryos. Allow me to state the question clearly: should we destroy living human embryos in order to experiment with their cells for the potential benefit of the living? The Executive Summary of the Report of the National Bioethics Advisory Committee (September 1999) aptly summarized the Congressional intent. "The current ban on embryo research is in the form of a rider to the appropriations bill for the Department of Health and Human Services (DHHS), of which the National Institutes of Health (NIH) is a part. The rider prohibits use of the appropriated funds to support any research , in which the embryo [is] destroyed, discarded, or knowingly subjected to risk of injury greater than that allowed for research on fetuses in utero"'. This is not an unexpected controversy. As early as 1982, the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research issued a report entitled

"Splicing Life: A Report on the Social and Ethical Issues of Genetic Engineering with Human Beings. Yet there has been little sustained development of consensus policies regarding the ethics of the new genetics and cell biology on the National level with the notable exception of recombinant DNA (rDNA) technology.

In 1999, the level of the intellectual and societal playing fields were changed by recent advances in the cloning of animals and manipulation of embryonic cells and by a decision of DHHS. On January 26,1999, Dr. Varmis, in testimony before the Appropriations Subcommittee, stated that the General Counsel of DHHS concluded that DHHS funds can be used to support research using human pluripotent cells derived from human embryos because the statutory ban does not apply. It was posited that "the statutory prohibition does not apply to research utilizing human pluripotent stem cells because pluripotent stem cells are not embryos." In response to this decision, early in 1999, 70 members of the Congress signed a letter that called upon DHHS to reverse the NIH Director's decision to allow funding for research on pluripotent stem cells. In a letter in Science, a group of 73 scientists offered support for the Director Varmus' decision to fund this research (Science 283:1849-1850, 1999). It is important to emphasize that this research on embryos one of the most controversial societal concerns today. It will be a proxy for our view of the essence of the meaning of life in the 21st century.

To understand the issues fully, we must clearly realize that while science measures and explores the known world, religion embodies a devotion to God and the meaning of life. Thus, there will be different worldviews within our society, and each one must be heard respectfully and considered carefully. As noted by Professor Gould, science and religion are two "Non-Overlaping Magisteria" Both make major contributions to society. But these contributions are different.

In this testimony, I shall present an analysis of this dilemma and offer a recommendation to resolve it.

Throughout my scientific career as a molecular geneticist, I have been involved in the ethical issues confronting biotechnology and cellular biology as well as medical advances. I was present at the Asilomar Conference where 150 scientists from 18 nations first met to debate the safety of rDNA technology and also consider the ethics of the research. Careful attention to both safety and scientific inquiry was incorporated into the NIH Guidelines that resulted from the Asilomar meeting. A deliberately careful approach was taken to this research and the guidelines were relaxed as scientific and social concerns permitted. As a member of the first Recombinant DNA Advisory Committee, I participated in deliberation on the development of this technology and was keenly aware that public confidence in this new field of biotechnology was imperative. This rDNA research using microbes and animal cells to produce medicines led to the establishment of the biotechnology industry as we know it today. For many years, I participated in recombinant DNA research and in policy deliberations on implementation of guidelines for conducting rDNA research. As the Commissioner of the Food and Drug Administration, lied in the development of regulations nationally and internationally that ushered in the current era of biotechnology. However, I must emphasize that this research and industrial development did not involve the disintegration of human embryos. Instead it used or "enslaved" bacterial yeast and animal cells to produce large amounts of desired products. As Commissioner, I was conscious that the ethical considerations as well as safety and effectiveness must be considered carefully in order to ensure public support.

Today, we are considering embarking on an equally significant revolution in cellular biology. The use of stem cells to produce tissues such as blood vessels, brain cells and heart cells could result in the partial regeneration of organs.

Unlike the development of biotechnology, which uses bacteria, yeast and adult tissue culture cells to produce products, the research on embryonic stem cells is dependent on disintegration of human embryos. Ethical problems abound. I contend that killing embryos by disintegration to harvest stem cells is illegal, immoral, and unnecessary.

Analysis of postulated benefits and inherent liabilities of research on embryonic pluripotent stem cells

1) The potential benefits are clearly enunciated in the March 19, 1999 letter in Science. These hypothetical benefits range from research to clinical medicine. It must be emphasized that these abundant research promises have yet to be realized even in experimental animals on a broad scale. Furthermore, history is replete with over promises as evidenced by the "War on Cancer" and the rapid development of a vaccine for AIDS. The risks, however, are real. An embryo, which could have a chance to live, is destroyed.

2) The Executive Summary of the Report of the National Bioethics Advisory Committee (September 1999), recommends that Embryonic Stem (ES) Cells be harvested from "excess or spare" embryos remaining after infertility treatments. Recommendation 2 states, "research involving the derivation and use of human ES cells from embryos remaining after infertility treatments should be eligible for federal funding. An exception should be made to the present statutory ban on federal funding of embryo research to permit federal agencies to fund research involving the derivation of human ES cells from this source under appropriate regulations that include public oversight and review." At first glance this looks to be an attractive option. Why not use an unwanted embryo to benefit the living? However, there are a number of objections. First, there are no existing regulations on In Vitro Fertilization procedures. Congress might wish to promulgate a law to regulate this industry including production of spare embryos, standards

for preservation, record keeping and options for adoption. Second, serious consideration should be given to developing procedures for adoption of embryos. Third, there is enormous peer pressure in science to "support the current ethos or risk loss of funding or intellectual denigration." Therefore, objectors could be cautious in expressing contrary opinions.

3) The NBAC proposed voluntary guidelines and possible regulations to cover this research. However, the safeguards recommended by the NBAC are neither sufficient nor enforceable. The problem is clearly seen in a report in The Washington EQg on November 3,1999. In an article entitled "Gene Research Moves Toward Secrecy ," Deborah Nelson and Rick Weiss reported that there were 8 deaths in gene therapy that were neither reported to patients nor properly communicated to the regulatory and scientific community. A loss of public confidence could drastically curtail research and development. In the early days of the recombinant research, there were reports of individuals leaving the country to find a location where research not approved in the US could be conducted. Steps were rapidly taken to prevent these ethical infractions.

4) The DHHS proposal and the NBAC recommendations enable the research to go forward expeditiously. However, there is an inherent conflict of interest when academicians comprise the vast majority of the membership. A special interest group that stands to "profit" through grants, industrial contracts, or research on the ethical concerns, thereby engendering notoriety, should not propose the recommendations. Any Commission that represents public interest should have broad participation including people with opposing views. Did the scientists learn from the rDNA regulations that public participation is cumbersome and should be avoided? Finally, once the research is initiated there is no turning back. An ethical position should be established first. While not challenging the credentials of any committee member, I contend that the

NBAC was not sufficiently independent and sufficiently broad to fulfill this mandate.

5) Recommendation 2 in the NBAC report implies that the extra embryos described have no legal status nor affords them any. This legal Issue raises many questions that demand further analysis. For example, can the donors of the sperm and egg that were used to produce an embryo legally give it away? Our Declaration of Independence states that" we hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." I contend that the embryo should receive such protection no matter how it is conceived. It is important to note that the embryo is accorded legal protection in many states. Finally, the harvesting of an embryo and the subsequent use of its cells for research might violate the 14th Amendment. Throughout American history, our Nation has striven to protect the vulnerable. The Americans with Disabilities Act, our efforts in Kosovo, and the recent Clinton Administration's Conference on Mental Health are contemporary examples of our National commitment in this regard.

6) The NBAC report focuses primarily on ES and Embryonic Germ (EG) cells. In science there is an ethos of the imperative, "if it can be done, try to do it", or, stated differently, "research is a 1st Amendment right." However, we live in a society where the cardinal principle is do no harm, whether in medicine or to the environment. Therefore, the use of *adult* stem cells should be fully explored and investigated prior to reversing the moratorium on human embryo research. Recent studies have demonstrated that these cells might be a suitable substitute for ES and EG cells.

We are at a critical junction in society and faced with a serious dilemma. The problem of conflicting human desires was stated clearly by Arthur A. Leff in the Duke Law

Journal December 1979, pg. 1229. " I want to believe, and so do you, in a complete transcendent and immanent set of propositions about right and wrong, findable rules that authoritatively and unambiguously direct us how to live righteously. I also want to believe, and so do you, in no such thing, but rather that we are wholly free, not only to choose for ourselves what we ought to do, but to decide for ourselves, individually and as a species, what we ought to be. What we want, heaven help us, is simultaneously to be perfectly ruled and perfectly free, that is, at the same time to discover the right and good and to create it."

- Conclusions and Recommendations

The issues are contentious and difficult. Our population is divided on the ethical appropriateness of the use of ES cells. The scientific imperative impels us ever forward. But there are major costs. These are the same considerations that we had at FDA as we embarked on the approval of biotechnology products and developed regulatory policies. We need to have the confidence of the people and to be concerned for the social, religious, medical, environmental and scientific interests of our citizens. Once we lose credibility, all chance for acceptance of the adequacy of the public health system is eroded. Under such conditions, the fruits of biotechnology would have rotted in the laboratory. However, we succeeded admirably! Following the pattern of the successful development of the biotechnology industry , I contend that the rush to engage in embryonic pluripotent stem cell research is foolhardy. We need to settle the ethical concerns first.

> Since I have moved from medicine into pastoral ministry , I have become more aware than ever of the need to ensure the dignity of each person. As a scientist, I am fascinated with the complexity of life and the capacity to

develop medicines that can alleviate the suffering of mankind. As a physician, I am committed to promoting health and providing care to the living. Now as a pastor, I know that we are made in the image of God (Genesis 1 :26-27) and as image bearers we must respect the sanctity.of life. Because each of us will die, it is imperative that we must know the meaning of life and live accordingly. Maintaining the endowment by the Creator "with certain unalienable rights, that among these are life, liberty and the pursuit of happiness" is as important for the embryo as for the adult. The utilitarian ethical stance of promoting the greatest good could lead to anew eugenics and the sacrifice of the vulnerable to relieve the pain and suffering and extend the life of the living.

Recommendations:

1) To ensure a broad representation of the citizens of the country, I recommend that Congress and the Administration appoint a Commission to review the current progress in ES, EG and Adult Stem cells. This Commission should be charged to hold public meetings and to report annually to Congress and the President. Additionally the Commission should develop an ethical framework for research with stem cells and propose a well-designed way to communicate with the public. The Commission should also recommend policy questions for analysis by the Administration and Congress. To ensure representation of all points of view, five members should be appointed by the President, five by the Senate and five by the House of Representatives. The membership should consist of at least two of each of the following: public representatives,

scientists, physicians, ethicists and theologians. The term of service should be limited to three years.

2) A moratorium for three years to enable the Commission to report to the Administration and Congress.

3) The Commission should be adequately funded through an independent budget to accomplish its tasks.

4) In the interim, as an added layer of safety, the FDA should examine whether additional guidelines and regulations are required for in vitro fertilization. FDA should report to Congress on the adequacy of regulations to meet the new responsibilities and the adequacy of the staff resources to accomplish the expectations of the public.

5) In the meantime, there should be sufficient funding for research on human adult stem cells and animal embryonic and germinal stem cells to enable this technology to continue to be developed during the moratorium on human pluripotent stem cells.

I will be pleased to answer any questions you have regarding my testimony, If you wish, I shall provide more in depth recommendations about the proposed Commission and additional insights into the commercialization of biotechnology that occurred on my watch as Commissioner of FDA. Thank you for your attention and concern.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE, MARYLAND

MARY DOE, et al.,	)	
Plaintiffs,	)	
	)	Civil Action No.
vs.	)	
	)	PJM-99-2428
DONNA SHALALA, et al.,	)	
Defendants.	)	

PLAINTIFFS' SUPPLEMENT TO REPLY
TO DEFENDANTS' MOTION TO DISMISS OR,
IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

COMES NOW, Mary Doe, by and through her attorney R. Martin Palmer, Jr. and supplements Plaintiffs' Reply to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment by the attached affidavit of C. Ward Kischer, Ph.D., Associate Professor Emeritus of Anatomy, Department of Cell Biology and Anatomy, The University of Arizona. This affidavit provides further information on the genetic aspects that make Mary Doe a person capable of bringing suit under the Fourteenth Amendment.

\s\ R. Martin Palmer
R. Martin Palmer, #03594

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of February, 2000, a copy of the aforegoing Plaintiffs' Supplemental Reply to Defendents' Motion to Dismiss or, in the Alternative, for Summary Judgment was mailed, postage prepaid, to the Lynne A. Battaglia, United States Attorney, 6625 United States Courthouse, 101 West Lombard Street, Baltimore, Maryland 21201-2692.

\s\R. Martin Palmer
R. Martin Palmer, #03594

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
- BALTIMORE, MARYLAND

MARY DOE, et al., Plaintiffs,	)	
	)	Civil Action No.
vs.	)	
	)	PJM-99-2428
DONNA SHALALA, et al., Defendants.	)	

AFFIDAVIT

STATE OF MARYLAND, COUNTY of WASHINGTON, to wit:

COMES NOW, C. WARD KISCHER, Ph.D., Associate Professor Emeritus of Anatomy, Department of Cell Biology and Anatomy, The University of Arizona and makes affidavit as follows:

The fertilized oocyte (egg) is a living entity, a human being, a human individual, and, a person, all one and inseparable. The reason why this is true is the following:

From the moment when the sperm makes contact with the ovum, under conditions we have come to understand and describe as normal, all subsequent development to birth of a living newborn is a fait accompli. That is to say, after that initial contact of sperm and egg there is no subsequent moment or stage which is held in arbitration or abeyance by the mother, or the embryo or fetus. Nor is a second contribution, a signal or trigger, needed from the male in order to continue and complete full development to birth. Human development is a continuum in which so-called stages overlap and blend one into another. Indeed, all of life is contained within a time

continuum. Thus, the beginning of a new life is exacted by the beginning of fertilization, the reproductive event which is the essence of life.

The advance of technology has enabled fertilization of the human to be accomplished in-vitro. Further, the first few cleavage (division) stages may be suspended and preserved for extended periods of time. Subsequently, the continuum of development may be resumed and continued. These procedures, when properly done, do not violate the integrity and continuity of the life continuum, as evidenced by the successful births of many who had been preserved (frozen) as embryos. Life is still life, and one is still dealing with the biological continuum of life.

\s\C. Ward Kischer
C. Ward Kischer, Ph.D., Affiant
Associate Professor Emeritus of Anatomy
Department of Cell Biology and Anatomy
The University of Arizona
Tucson, Arizona 85724-5044

WITNESS my hand and Official Notarial Seal.

Melanie L. Port
Notary Public
My Commission Expires: 7/01/2001

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE, MARYLAND

MARY DOE, et al., Plaintiffs,	)	
	)	Civil Action No.
vs.	)	
	)	PJM-99-2428
DONNA SHALALA, et al., Defendants.	)	

ADDENDUM TO PLAINTIFFS' SUPPLEMENT TO REPLY TO DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGEMENT

COMES NOW, Mary Doe, by and through her attorney R. Martin Palmer, Jr. and, by way of addendum to Plaintiffs' Supplement to Reply to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment, attaches a copy of the Curriculum Vitae of Clayton Ward Kischer, , Ph.D., Associate Professor Emeritus of Anatomy, Department of Cell Biology and Anatomy, The University of Arizona, Tucson, Arizona.

\s\R. Martin Palmer
R. Martin Palmer, #03594

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25TH day of February, 2000, a copy of the aforegoing Plaintiffs' Supplemental Reply to Defendents' Motion to Dismiss or, in the Alternative, for Summary Judgment was mailed, postage prepaid, to the Lynne A. Battaglia, United States Attorney, 6625 United States Courthouse, 101 West Lombard Street, Baltimore, Maryland 21201-2692.

\s\R. Martin Palmer
R. Martin Palmer

CURRICULUM VITAE

Clayton Ward Kischer
Associate Professor
Department of Anatomy
The University of Arizona
Tucson, Arizona 85724
(602) 626-6090

Date and Place of Birth: March 2, 1930, Des Moines, Iowa, U.S.A.

Marital Status: Married, three children: Cynthia Ann; Eric An11ine; Frank Henry 1947-1949 U.S. *Navy/PO3C*

EDUCATION

1953 B.S. in Education, University of Omaha
Majors: Secondary Education, Biology
Graduate work course credits: Education Administration 1960 M.S., Iowa State University
Major: Experimental Embryology Minor: Physiology

1962 Ph.D., Iowa State University
Major: Experimental Embryology Minor: Physiology Minor: Biochemistry

1964-1966 N.I.H. Postdoctoral Fellow, University of Texas, M .D. Anderson Hospital and Tumor Institute, Department of Biochemistry, Houston, Texas. Collaboration and training with Dr. Lubomir Hnilica on isolation, characterization and function of histone proteins from embryonic tissues and organs. This research involved cellular fractionation, extraction and electrophoresis, analytical techniques for nucleic acids and proteins and amino acid analysis.

Independent research was also conducted on biochemical and ultrastructural aspects of organogenesis using embryonic skin as a model. The work included the effects of prostaglandins, inflammatory mediators, on embryonic skin grow n in organ culture.

Supervisor: Dr. Darrell N. Ward, Chain11an, Department of Biochemistry.

1976-1977 Visiting Professor, Department of Surgery, Section of Surgical Biology, University of Arizona College of Medicine, Tucson, Arizona. Working with members of the research section on studies of fibrosis, collagen synthesis and degradation, etiology and control of hypertrophic scarring. Sponsor & Collaborator: Erle E Peacock Jr., M.D.

PROFESSIONAL AND TEACHING EXPERIENCE

1953-1958 Cytologist
(1953-1956 full time; 1956-1958 part time)
University of Nebraska College of Medicine, Departments of Anatomy , and Pathology (dual appointment).

Instructor in Anatomy
Taught gross anatomy laboratory in the School of Nursing.

Director, cytopathologv service
Directed all exfoliative cytology and trained cytotechnologists in department of pathology. Attended a short course in Exfoliative Cytology at Comell University College of Medicine in 1955 under the supervision of Dr. George N. Papanicoiaou.

1956-1958 Biology Teacher

Westside High School, Omaha, Nebraska. Taught junior and senior high students in general science and biology.

1958-1962 Graduate Student

Iowa State University. Teaching and research assistantships. Appointed Instructor in summer of 1961 and taught vertebrate embryology. Teaching assistantship included lecture and laboratory instruction in general zoology and embryology courses.

Major professor: Dr. Howard L Hamilton. Dr. Hamilton was a student of Professor Benjamin Willier of Johns Hopkins University and is author of the revised version of Lillie's Development of the Chick.

1962-1963 Assistant Professor of Biology

Illinois State University. Taught courses in human anatomy and physiology. Temporary appointment.

1963 Resident Research Associate

(summer) Argonne National Laboratory, Division of Biological and Medical Research. Collaboration with Dr. Ed W. Daniels in electron microscopy. Studies of ultracentrifuged nuclei and cellular components. Performed experiments in cellular micromanipulation and implantation. Additional studies conducted on cell fractionation and the effects of thalidomide on developing chick embryos.

1963-1964 Assistant Professor of Zoology

Iowa State University. Taught embryology and experimental embryology, graduates and undergraduates and assisted in zoology laboratories. Temporary appointment.

Supervisor of two special research students

1) studies of thalidomide effects on chick embryos, and

2) millipore filter methods for fractionation of subcellular components of embryonic cells.

1966-1967 Chief, Section of Electron Microscopy

Southwest Foundation for Research and Education, Department of Anatomy, San Antonio, Texas. Designed, organized and installed laboratory of electron microscopy. Continued independent research.

1967 -1977 Assistant Professor of Anatomy, 1967 -1970

Associate Professor of Anatomy, 1970-1977

(Tenure Awarded 1970)

Department of Anatomy, University of Texas Medical Branch. Galveston, Texas. Teaching areas: histology, embryology, experimental embryology, cytology, electron microscopy, immunology, cell biology, pediatrics continuing education program, anatomy lectures (combined) to paramedical students and College of Nursing. Research: the nature of action of prostagladins on developing and regenerating skin; characterization: anatomic, fine structural and biochemical, of hypertrophic and mature scars, normal skin, and scars under surgical management.

1969-1973 Research Consultant to the Chief-of-Staff
Shriners Bums Institute, Galveston, Texas. Consulting on research methods and results, as well as conducting personal, independent research, on dynamics and origins of the hypertrophic scar as it occurs subsequent to a deep injury..

1971-1973 Director, Electron Microscopy Laboratory
Shriners Bums Institute, Galveston, Texas. 1977 -Pres.

1977-Pres. Associate Professor of Anatomy
(Tenure Granted 1980)
Department of Anatomy, University of Arizona College of Medicine, Tucson, Arizona. Teaching areas: embryology, histology, graduate program, trauma unit, College of Nursing, Molecular & Cellular Biology.
Research: the nature and action of effects of prostaglandins of developing skin; characterizations of keloids and hypertrophic scars; collaborative studies with surgical biology unit on aspects of wound healing. Collaborative studies with neurosurgery , cardiovascular surgery and orthopedic surgery .Fibrinolytic assays, vascular grafts.

1992 Emeritus status; semi-retired

1995 Retired

1977 -1989 Director, Scanning Electron Microscopy Laboratory
Dept. of Anatomy, U. Arizona College of Medicine

CONSULTANT

1990-91	ONTx, Inc.
1990-92	MENTOR, Inc.
1992-	American Life League

MAJOR RESEARCH GRANTS

1967-1969	NIH Grant 5R01 HD 01314 (P.I.)
1970-1973	NIH Grant 5R01 AM 13530 (P.I.)
1971-1973	Research Contracts from Shriners Bums Institute, Galveston, Texas (P.I.)
1975-1976	Morrison Trust Research Grant 2-19511-260410 (P.I.)
1977 -1978	P.H.S. Grant 5010-3150-42 Research Grant (P.I.)
1978-1981	NIH Grant 1 R01 GM 25159 (Co-P.I.)
1986-1989	NIH Grant 1 R01 GM 34928 (P.I.)

COMMITTEE EXPERIENCE

McLaughlin Fellowship (Immunology- Texas)

Research, Vice-Chaimlan, subcommittee on small grant review (Texas)

Animal Care (Texas)

Board of Editors, Texas Reports on Biology and Medicine (Texas)

Interim Curriculum Study Committees (Texas)

Teaching Committee, Cell Biology Course (Texas)

Student Progress Committee (Arizona)

Graduate College Degree Certification (Arizona)

Code of Scholastic Conduct (Arizona)

Human Subjects Comm. (Arizona)

Ad Hoc Committee on Meeting Contracts and Planning (EM SA)

Developmental Biology Comm. (Arizona)

MEMBERSHIP IN SCIENTIFIC SOCIETIES

American Association for the Advancement of Science (AAAS)

American Association of Anatomists (AAA)

American Society for Cell Biology (ASCB) Society for Development Biology (SDB)

Electron Microscopy Society of America (EM SA)

Arizona Society for Electron Microscopy and Microbeam Analysis (ASEM MA)

Texas Society for Electron Microscopy (TSEM)

HONORS

1953	Gamma Pi Sigma (Honorary Chemistry)
1969-1971	Secretary- Treasurer, Galveston Research Society (affiliated with American Federation of Clinical Research)
1971-1972	President; Galveston Research Society

1969-1973	Texas Society for Bectron Microscopy Newsletter Editor
1969-Present	Listed in American Men and Women of Science
1970-1978	Listed in Who's Who in the South and Southwest
1979-Present	Listed in Who's Who in the West
1992-Present	Listed in Who's Who in Science and Engineering
1996-Present	Listed in Who's Who in America
1969-1971	Appointed to Editorial Board: Texas Reports Biology and Medicine
1970	Invited speaker and participant in Third International Symposium on Inflammation, June, Augusta, Michigan
1974-1975	Elected President-Elect, Texas Society for Electron Microscopy
1975-1976	President, Texas Society for Electron Microscopy
1975	Invited speaker, Trinity Episcopal School, Science Convocation, Galveston, Texas
1978-1981	Certification Board, Electron Microscopy Society of America (EMSA)

1978-1979	Program Chairman, Arizona Society for Electron Microscopists and Microbeam Analysis (ASEMMA)
1979-1980	Elected President-Elect ASEMMA
1980-1981	President, ASEMMA
1981	Invited speaker and participant SEM Annual Symposium, Dallas
1982	Invited speaker and participant (Review) SEM Annual Symposium, Anaheim
1982	Appointed Organizer for SEM Annual Symposium
1983	Local Arrangements Chairman, EMSA meeting, Phoenix, 1983
1985	Invited speaker and participant in 2nd International Colloquium on Dupuytren's Contracture -London, Ontario, Canada
1983-1985	Appointed to Editorial Board: SEM Journal
1984	Invited lecturer at The Institute for Cell Biology, University of The Philippines at Los Banos, College, Laguna, Los Banos, The Philippines.
1986	Invited Speaker (Seminar) at Wakayama City Medical College, Departments of Anatomy and Pathology, Wakayama City, Japan.
1986	Voted Honorary Member Texas Society for Electron Microscopy.

1983, 1984 Organizer and Co-Chairman; Skin Biology Session, Annual Meetings, Scanning Microscopy 1989, 1990 International, Washington, D.C.

1991 Invited speaker & participant in Third International Colloquium on Dupuytren's Contractive-Hannover, Gem1any (unable to attend)

1994 Appointed to Editorial Board: SEM Journal

ADMINISTRATIVE EXPERIENCE

Academic and Professional:

Coordinator of Microanatomy, Department of Anatomy, University of Texas Medical Branch. Organized and collected tissues for class slide set, scheduled lectures, conferences, labs and coordinated subject material with gross anatomy. Developed and scheduled clinical correlations in microanatomy.

Member, teaching committee in cell biology. Represented anatomy in developing curriculum for medical students. Also, lectured in the course.

Administrator or principal investigator of 4 USPHS (NIH) research grants, 5 small institutional grants, 2 research contracts, and one private research foundation grant.

Administrator and director of electron microscopy laboratories in San Antonio, Galveston and Tucson.

Director, Scanning Electron Microscope Laboratory (Arizona).

Ad Hoc Reviewer, Division of Physiology, Cellular and Molecular Biology, NSF.

Ad Hoc Reviewer, Division of Molecular and Cellular Neurology, NSF

Curriculum development: includes design of self-instructional units on correlations of histology and pathology.

Vice chairman, research committee, University of Texas Medical Branch. Presided over meetings in absence of chairman and assigned research evaluations.

Member, subcommittee of research committee for small grant review.

Texas Society for Electron Microscopy: Newsletter editor (4 years), acquired budget, organized publication, over- seeing of printing and disbursements, planned formats, acquired contributions, sold professional advertisements. This publication published three times a year for a 500 member circulation. This became the model for an eventual Journal of TSEM. President (1975-1976), presided over executive committee meetings, assigned duties, appointed committees, balanced the budget, oversaw expenditures, innovated new programs.

Member, graduate student examination committees in anatomy, microbiology and immunology.

Member, Student Progress Committee, 1978-1980 (Arizona).

Interviewer of medical school applicants for Admissions Committee (Texas and Arizona).

Coordinator, Embryology and Developmental Anatomy, 1977-1981 (Arizona).

Director of graduate training, Department of Anatomy, University of Arizona College of Medicine, 1978-1980.

Reviewer and discussant, SEM Symposium, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1989, 1990, 1991, 1992.

Organizer, SEM Symposium, 1983, 1984, 1989, 1990, and 1994.

Member, Code of Scholastic Conduct Committee, 1985-86 (Arizona).

Periodic reviewer for following journals:

Anatomical Record

Journal of Investigative Dermatology

Prostaglandins

Texas Reports Biology and Medicine

Life Sciences

Collagen and Related Research

Transactions of the American Microscopical Society

Wound Repair and Regeneration

Science

Archives of Dermatology

SEM Journal

American Journal of Physical Anthropology

Cytotechnology

Course Teaching:

Medical Cell Biology--team teaching

Vertebrate Embryology--own course

Experimental Embryology--own course

General Zoology--own course

Medical Histology--team teaching (Coordinator -U. Tx. M ed. Branch, Galveston)

Medical (Human) Embryology--team taught in College of Medicine

Human Embryology--in anatomy curriculum (Coordinator 1977 -1982)

Anatomical Techniques--team taught

Embryology Elective (Research)--own course

Histology and Electron Microscopy Elective (Research)--own course

Trauma -Emergency Services--lectures

Embryology -College of Nursing--lectures in Midwifery program

Cell and Development Biology--lectures

Human Embryology--own course (Coordinator 1988-1995)

Advisor of Graduate Students -Texas:

Robert E Wolf
Walter Sasworth
Gordon Schrank
James Jeter Jr.

Advisor and Supervisor of Medical & Undergraduate Research Students –Arizona

Michael Jaqua	Susan Solomon	Jill Talik
Peter Sarantopolous	Laurie Reed	Elizabeth Smith
Michael Smith	John Gilliland	Cheryl Boone
Angela Ung	Don Sheridan	Amanda Wharton
David Howell	Tim Sayer	Julie Rosen
Stacey McIlroy	Alexandra Ilardo	Merrie Morris
Marilyn Fuller		

American Heart Association Summer Fellowship Supervisor of:

Scott Stroming Kathleen Crowe

FULL PAPERS (Including Reviews)

Wilcox, H.R, Pederson, ES. and Kischer, C.W. 1956. An analysis of cytologic screening for uterine cancer (9,815 cases). Surgery, Gynecology and Obstetrics, 102:215-217.

Kischer, C.W. and Hamilton, H.L 1963. Effects of respiratory inhibitors on development of the down feather. Am. J. Anatomy, 113:100-116.

Kischer, C.W. 1963. Fine structure of the developing down feather. J. Ultra. Res., 8:305-321.

Kischer, C.W., Gurley, LR and Shepherd, G.R 1966. Nuclear histones and early embryogenesis of the chick. Nature, 212:304-306.

Kischer, C.W. 1966. Structures resembling virus particles in a case of early organogenesis. Texas Reports Bioi. Med., 24:724-728.

Kischer, C.W. and Hnilica, LS. 1967. Effects of histones on embryonic cells. Experientia, 23:1-5.

Kischer, C.W. and Hnilica, LS. 1967. Analysis of histones during organogenesis. Ex. Cell Research, 48:424-430.

Kischer, C. W. 1967. Effects of specific prostaglandins on development of chick embryo skin and down feather organ, in vitro. Development Biology, 16:203-215.

Kischer, C. W. and Furlong, N. B. 1967. DNA polymerase assay in developing skin and its organ derivative, the down feather. Proc. Soc. Exp. BioI. and Med., 124:1188-1190.

Kischer, C. W. 1968. Fine structure of the down feather during its early development. J. Morphol.,125:185-204.

Kischer, C.W. 1969. Accelerated maturation of chick embryo skin treated with a prostaglandin (PGB1). An electron microscopic study. Am. J. Anat., 124:491-512.

Kischer, C. W. and Keeter, J.S. 1970. Prostaglandin-B1, embryonic skin and the dermo- epidermal junction. J. Cell Biology, 47:303-310.

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ABSTRACTS

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Malone, J.M., Gervin, A.S., Kischer, C.W., Keown, K and Moore, W.S. 1978. Venous fibrinolytic activity and histology with distention. 64th Clinical Congress, Amer. Coil. Surgeons, San Francisco, October.

Malone, J.M., Gervin, A.S., Kischer, C.W., Keown, K and Moore, W.S. 1978. Changes in venous fibrinolysis and histology with cryopreservation. Assoc. for Academic Surg., Cleveland, November.

Kischer, C. W .and Shetlar, M .R 1979 .Vascular occlusion during repair and regenerative processes. 37th Annual Meeting, Electron Microscopy Society of America, San Antonio, August.

Driscoll, S. , Carlisle, D. , Kischer, C. W. and Shetlar. M .R 1979. Dermal chalone levels in hypertrophic scars, normal scars and normal skin. 19th Ann. Meeting, American Society for Cell Biology, November, Toronto.

Kischer, C.W., Shetlar, M.R, Droegemueller, W. and Chvapil, M. 1980. Ultrastructural and biochemical changes in the architecture of collagen in human cervix treated with urea. Annual Meeting, American Association of Anatomists, Omaha, April.

Kischer, C. W .and Arem, A.J. 1980. Pseudotendon: Ultrastructural similarities to scar development. 38th Annual Meeting, Electron Microscopy Society of America, Reno, August.

Kischer, C.W., Chvapil, M. and Shetlar, M.R 1980. Characterizations of hypertrophic scars and keloids. 2nd International Congress on Cell Biology, September, West Berlin, Germany.

Kischer, C.W. and Brody G.S. (Invited). 1981. Structure of the collagen nodule from hypertrophic scars and keloids. SEM Symposium, April, Dallas.

Kischer, C.W. and Speer, D. 1981. Dupuytren's Contracture. Xth Western Regional Electron Microscopy Meeting, May, Tucson.

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Kischer, C.W., Hendrix, M.J.C. and Hynes, RO. 1981. Immunofluorescent localization of fibronectin in normal skin, hypertrophic scars and granulation tissue. 21 st Annual Meeting, American Society for Cell Biology, Anaheim, Calif. 91 :144a.

Kischer, C. W .and Speer, D.S. 1982. Developing antler as a model system of fibrillogenesis. 40th Ann. Proc. Sect. M icrosc. Soc. Amer., August, Washington, D.C., pp. 298-299.

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Shetlar, M.R, Shetlar, C.L and Kischer, C.W. 1984. Glycosaminoglycans in human granulation tissue, hypertrophic scar, mature scar and normal skin. Ann. Meet. FASEB, St. Louis.

Kischer, C. W .1983. Comparative ultrastructure of hypertrophic scars and keloids. SEM Symposium, April, Detroit.

Kischer, C.W. 1984. Electron microscopic contributions to the construction of wound healing models. Arizona Society for Electron Microscopy (ASEMMA), annual meeting. May, Tucson.

Kischer, C. W .and Teska, T. 1984. Discrimination of cell types in bulk tissues using coated samples and wave-length dispersive microprobe analysis. Third Intn'l Congress on Cell Biology, August, Tokyo, Japan.

Shetlar, M .R, Shetlar, C.L, Hendricks, Land Kischer, C. W .1984. Utilization of athymic mice for studies of human hypertrophic scars and keloids. 24th Ann. Meeting, Amer. Soc. Cell Bioi. November, Kansas City.

Gehlsen, KR, Kischer, C.W. and Hendrix, M.J.C. 1984. The utilization of neural crest cells as controls for melanoma tumor cell invasion through a basement membrane. 24th Ann. Meeting, Amer. Soc. Cell Bioi., November, Kansas City.

Kischer, C.W. 1986. Organ culture of embryonic blood vessels: an in vitro model for the study of vascular disease. American Assn. Anatomists, April, Reno, Nevada.

Kischer, C.W., Chvapil, M., Holubec, H., Jaqua, M. and Ulreich, J. 1986. Compatibilityof fibroblasts with modified biomembranes: SEM Analysis. Proc. XIth Int. Cong. Electr. Microsc. , Kyoto, Japan.

Shetlar, M .R, Shetlar, C. Land Kischer, C. W .1986. Experimental studies of human keloids and hypertrophic scars utilizing athymic nude mice. Soc. Exp. Bioi. M ed. , New Orleans, October.

Kischer, C. W ., Shetlar, M .R, Pindur, J. and Shetlar, C. L 1987 .The nude athymic mouse as an experimental model for the study of hypertrophic scars and keloids. Amer. Assn. Anat., Washington, D.C., May.

Kischer, C. W .1987 .Microvascular occlusion in healing wounds and fibrotic lesions. Fourth World Congress for Microcirculation. Tokyo, Japan, July.

Kischer, C.W., Pindur, J., Holubec, H., Jones, M., Scuderi, P. and Ulreich, J. 1987.

Comparison of cell lines cultured from hypertrophic scars and normal skin. 27th Annual Meeting, Amer. Soc. Cell BioI., November, St. Louis.

Kischer, C. W ., J. Pindur and M. Jones. 1988. Fibronectin (FN) production in cell lines from hypertrophic scars and normal skin: variations. 39th Ann. Meeting Tissue Culture Assn. Las Vegas, June 1988.

Shetlar, M.R, Shetlar, C.L and C.W. Kischer. 1988. Incorporation of 14C-glucosamine into glycosaminoglycans by human keloid tissue implants in athymic nude mice. Ann. Meeting of Federation of Soc. Exp. Bioi. Las Vegas, May '88.

Kischer, C.W. and Pindur, J. 1990. B"fects of platelet derived growth factor (PDGF) on cells from hypertrophic scar, keloid and normal dermis. 29th Ann. Meeting Amer. Soc. Cell BioI., Houston, November.

Kischer, W. and Pindur, J. 1991. Fibroblast cell lines grown from human granulation tissues. World Congress on Cell and Tissue Culture, Anaheim, June.

EXTRAMURAL
SEMINARS, LECTURES AND PRESENTATIONS
1955 through 1992

Location, Date,
Topic

Univ Nebraska Coil Med, Omaha, Oct 1955
Cancer cytology; Techniques and Diagnosis Nebraska, Dept of Anatomy

Univ Nebraska Coil Med, Omaha, Sept 1956
Cancer cytology and CA in situ Nebraska, Dept of Surgery

Iowa State University, Fall 1961
Effects of Respiratory Inhibitors on the Dept of Zoology Developing Down Feather, in vitro

Iowa State University, Fall 1961
Interview by Iowa State Daily on "Organ Dept of Zoology Culture Apparatus"

Illinois State University, June 1962
Research; The Developing Down Feather Dept of Biology of the Chick Embryo as a Model for Organogenesis

Oklahoma City University, Spring 1963
Research; Organ Culture of the Developing Dept of Biological Sciences Down Feather in Studies of Organogenesis

Marquette University, Spring 1963
Research; Electron Microscopy of the Dept of Biology
Developing Down Feather of the Chick Embryo

Temple University, Spring 1963
Research; A Proposal for the Study of Dept of Biology
Embryonic Messenger-RNA

Argonne National Lab, Spring 1963
Research; Effects of Thalidomide on the Div of Biology &
Medicine Developing Chick Embryo

Iowa State University, Fall 1963
Research; A Procedure for the Separation Dept of Zoology
of Cellular Components by Microfuge

Albright College, Spring 1964
Lecture on Genetic Code Dept of Biology (Annual Sigma Xi
Research Lecture)

Arizona State University, Spring 1966
Research; Histones in Developing Tissues Dept of Biological
Sciences

Univ Texas Med 8r (UT MB), Spring 1966
Research; Effects of Prostaglandins on Dept of Anatomy
Developing Skin, in vitro

Brookhaven National Lab, Spring 1966
Research; Electron Microscopic Methods for Div of Biology
& Medicine the Study of Organogenesis

Univ Texas San Antonio Sch of Med Dept of Anatomy,
Spring 1967
Research; A Model for the Study of Organogenesis

Univ Texas Med Br- Galveston , Fall 1969
Research; Development of Skin and Its Occup Therapy, Shrine Bums Inst Derivatives

Univ Texas Med Br -Galveston, Fal11969
Teratogens and Anomalies Dept of Pediatrics

Sam Houston State Univ , Winter 1969
Research; Techniques in Modem Research (Beta Beta Beta Soc)

Univ Houston at Clear Lake City, Fall 1974
Contributions of Electron Microscopy to Clear Lake, Texas Contemporary Science

Univ Texas Med Br -Galveston, Yearly from '69 -'75 to
Current research [includes a super seminar: Dept of Anatomy Why Does a Dog Lick its Wounds?]

Univ Arizona Coil Med, Sum 1975
Research; The Hypertrophic Scar and Dept of Anatomy
Keloid: Origins and Resolution

Univ Arizona Coli Med, Sum 1979
Research; The Origin of the Hypertrophic Med Grand

Rounds, Tucson, AZ Scar Univ Philippines Los Banos ,
Fall 1984
1) Research; Electron Microscopy and X-ray Institute Cell Biology Analysis as Investigative Tools Los Banos, Laguna, PHIUPPINES
2) Lecture; Skin and Scar

Univ Arizona Coll Med, Fall 1983
Research; Current Studies of Hypertrophic Med Grand Rounds Scar and Keloid

Univ Arizona Coll Med, *Winter 1980*
Lecture; Wound Management Emergency Medicine

Univ Arizona Coll Med, Spring 1982
Lecture; Wound Management Emergency Medicine

Univ Arizona Coll Med, Fall 1980
Lecture; Development of Bone and Dept of Surg, Orthoped
Cartilage

Univ Arizona Coll Med , Fall 1981
Lecture; Development of Bone and Dept of Surg, Orthoped
Cartilage

Univ Arizona Coll Med, Spring 1979
Lecture; Human Embryology: The female Dept of OB-GYN
Reproductive System

Univ Arizona Coll Med, Fall 1983
Lecture; Development of facial Plates and ENT -Res/fellows
Palates

Univ Arizona Coll Med, Fall 1984
Lecture; Development of facial Plates and ENT -Res/fellows
Palates

Univ Arizona Coll Nursing, 1982 through 1987
Lectures; Human Embryology MidWifery Program

Univ Arizona Coil Med, 1979-83, 86- 87-Current
Research Deptl Seminars

Univ Western Ontario, Fall 1985
Research; Dupuytren's Contracture - Dept of Anatomy
Equivalents to the Hypertrophic Scar London, ONTARIO,
Canada
Wakayama Medical College, Fall 1987

Research; Microvascular Occlusion and its Wakayama City, JAPAN Relation to the Hypertrophic Scar Dept of Anatomy

Univ Arizona Coll Med, 1982-84, 87, 89-90
Current Research; Hypertrophic Scar and (Surg Biol), Seminar program Keloid [includes a quasi-model for the study of HS and K]

Univ Arizona, Spring 1991
Human Development and the Abortion Issue Student Right to Life Club

Univ Arizona Coll Educ, Fall 1985 through 1989
Scientific Methods in Research Education Foundations

KNST Radio Talk Show, Fall 1989
Human Development and the Beginning of Life (Bob Ritter)

KNST Radio Talk Show, Spring 1991
Human Development and the Abortion Issue (Vic Caputo)

Tucson, Arizona, Fall 1992
Human Development and the Abortion Issue Arizona Right to Life

Channel 49, Public Access, Fall 1992
Abortion and the Truth About Human Television [TCC]: Interview Development Tucson, Arizona

Channel 49, Public Access, June 1993
Abortion & Fetal Tissue Research Television [TCC]: Interview Tucson, Arizona

Channel 49, Public Access, Winter
Sources of Scientific Counsel to the Supreme Court in Roe, Webster and Similar Cases/The Tucson, Arizona

Television [TCC]: Interview, (February)1994
Clinton Health Plan

Univ Arizona Spring, 1994
Development of the Female Reproductive Dept of OB-GYN
Tract

National Cable Network NET -TV , April 15th, 1994
Human Embryo Research- Use of Incorrect Interview
Human Embryology by NIH Human Embryo Research
Panel

Family News and Focus Radio, June, 1994
The State of Human Embryo Research Network Arizona
Right To Life State Meeting September The State of
Prenatal Research: An Update 17th, 1994

Ramsey Colloquium, October 6th, 1994
Human Embryo Research Ad Hoc Member New York City,
N.Y. (sponsored by Journal-First Things)

The Scientist: Interviewed by Frank Hoke,
December 19th, 1994
President Clinton's announcement of withholding funds for
experimental human embryo research

Our Sunday Visitor: Interviewed by Maria Scaperlanda,
April 23rd, 1995
Why Pro Life Views Get The Class Axe

Tucson Chapter of Right to Life, May 6th 1995,
Human Embryo Research Crisis Pregnancy Center
Volunteers

June 21st 1995 Human Development and The Media
Channel 49, Public Access

Sept. 10th, 1995
The Human Development Hoax *I* The Christian Television [TCC]: Interview Contract With America Tucson, Arizona

The Scientist: Interviewed by Steven Benowitz, June 3rd, 1996
The Ethical Basis for Abortion-Related Research

Essays by C. Ward Kischer. Ph.D.

Of Moon And Members. TSEM Newsletter-. No.13, 5 March, 1970.

How The Good News Was Brought From Houston To San Antonio. TSEM
Newsletter. 2: No.1, Summer, 1970.

On The Quality Of *Graduate Education In The Great State* Of *Texas.* TSEM Newsletter. 2: No.2, Winter, 1970.

The Academic Marketplace. TSEM Newsletter. 2: No.3, Spring, 1971.

Why The Lecture System Should Be *Abolished.* TSEM Newsletter. 2: No.4, Fall, 1971.

Diamond Knives Revisited. TSEM New sletter. 3: N 0. 1, Winter, 1 971 .

Power And The Scientific Community. TSEM Newsletter. 3: No.2, Spring, 1972. *Profits,*

Patrons And Protection. TSEM Newsletter. No.1, Fall, 1972.

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*The TSEM Newsletter is the forerunner to the Journal of the Texas Society for Electron Microscopy. The complete number of issues are deposited in the University of Arizona Science Library, Tucson, Arizona. Call no.: QH212.E4T485M.

**Lo Que Pasa is a University of Arizona publication.

***The Stanford Review is a student publication of Stanford University.

****The Remnant is a student publication of The College of William & Mary.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE, MARYLAND

MARY DOE, et al., Plaintiffs,	)	
	)	Civil Action No.
vs.	)	
	)	PJM-99-2428
DONNA SHALALA, et al., Defendants.	)	

AFFIDAVIT

STATE OF CALIFORNIA, COUNTY of ORANGE, to-wit:

COMES NOW, RONALD L. STODDART of Christian Adoption & Family Services and makes affidavit as follows:

1. I am an attorney at law, licensed to practice law in the State of California. I have practiced adoption law since 1984 and during that time have completed over 1000 independent adoption cases involving infants. I am a member of the American Academy of Adoption Attorneys and a member and past president of the Academy of California Adoption Lawyers.

2. I am, and since January, 1995 have been, the Executive Director of Christian Adoption & Family Services, a licensed adoption agency. The agency is involved in domestic and international adoptions.

3. Based on my experience in the field of adoption, I would estimate that there are at least 25 families seeking to adopt for every infant that is relinquished for adoption in the United States. One of the significant reasons for the growth in the number of international adoptions, which accounted for over 15,000 adoptions in the United States in 1999, is the substantially larger number of potential adopting families over the number of infants available for

adoption domestically. Credible estimates place the total number of families seeking to adopt in the United States at over 1.5 million.

4. Several years ago, a crisis that occurred in England involving unclaimed frozen embryos focused my attention on the uncertain fate of embryos currently stored in cryo-banks throughout the United States. Upon further investigation, I learned that by conservative estimates, there are over 150,000 embryos currently being held in cryo-banks, much like frozen orphanages.

5. I believe that life begins at conception and that these frozen embryos, created with the hope of life by families undergoing infertility treatment, are deserving of the opportunity to resume the process of life begun at their fertilization and suspended when they were temporarily frozen.

6. In 1997, Christian Adoption & Family Services began a program to offer families who had frozen embryos the opportunity to be placed for adoption and to have the opportunity to be born to qualified and loving parents. In early 1998, our first client families - one a genetic family with 20 frozen embryos and the other an adopting family - were matched and the embryos were placed for adoption. Like any more traditional adoption, the adopting family completed a homestudy and educational training for parenting an adopted child, while the genetic family, like a traditional birth family, received counseling on making this life long decision. Following one unsuccessful implantation, the adopting mother became pregnant with one of the now-thawed embryos. The child, a beautiful and healthy baby girl, was born on December 31, 1998. She recently turned 1 year of age and is developing normally.

7. Since the program was introduced to the general public in the summer of 1999, our agency has had 1043 requests for information from potential adopting parents. Of this number, 25 families have begun the homestudy process to prepare themselves to become adopting/birth parents.

8. During this same time period, July 1999 to January 2000, our agency has had 96 requests for information from genetic parents with embryos in frozen orphanages. Nineteen of these families have agreed to place their embryos for adoption and are in various stages of being matched with adopting parents. During the week of February 14,2000 we expect to learn the outcome of the implantation of embryos in 3 adopting mothers.

9. Although our frozen embryo adoption program (called Snowflakes) is in its infancy, the response has been such to validate several important assumptions:

a. Genetic parents with frozen embryos, given the choice of having their embryos destroyed, donated for research or placed for adoption, will overwhelmingly choose adoption or leaving the embryos in cryo-banks. It is very rare for families to choose destruction or research.

b. There are a growing number of potential adopting parents who will adopt and carry embryos to term. As more potential adopting parents learn of this program, and other like it, there will undoubtedly be many more potential adopting parents than there are embryos available for adoption.

c. The potential for finding families to adopt every embryo available for adoption is more than great; it borders on a certainty .The cost of such adoptions is typically less than more traditional adoptions and it carries far fewer risks of losing a child associated with children born to birthmothers and then placed for adoption.

d. The ability of an adopting mother to carry and give birth to her own adopted child, making the child her birth child and adopted child, is extremely appealing to the majority of potential adopting parents. The medical efficacy of the procedures involved have been proven.

10. Although not every embryo which is thawed in preparation for implantation will survive the thawing process, and not every embryo which is implanted will attach to the mother's uterine wall and result in a pregnancy, many will. The children born as a result of embryo adoption will fulfill the dreams and desires that burned in the hearts of the genetic parents when they were fertilized. They will have passed one of the greatest medical technology obstacle courses devised by man. They will have survived and experienced the life they were intended to have and will have the opportunity to fulfill the potential we believe exists in every human being.

Although this affidavit includes as much emotion and conviction as it does objective facts, it is presented to this honorable court in the hope that the subject of life will not be reduced to scientific equations. Science has invaded the area of fertility for the benefit of parents and their children. Science did not create embryos for its own benefit (research) and should not be allowed to redirect the fate of the children it helped create.

\s\Ronald L. Stoddart
Ronald L. Stoddart, Affiant

"No one liked any of the options that were available for disposing of frozen embryos. So, this alternative is an exciting option for another couple to have a family."

Joel H. Batzofin, M.D.
Director Huntington Reproductive Clinic Pasadena, CA

"I would tend to see the option you've been offered (where embryos already exist and are going to be destroyed) as "adoption" at an earlier stage of development. The idea of embryo adoption is a new concept...From a theological standpoint, I believe the fertilized eggs in question already have an eternal soul...."*

James Dobson, Ph.D.

"It's an incredible concept that I am both birthmother and adopting mother. I will provide oxygen, nutrients, a warm place to grow, and love. What an awesome story we'll have to tell our children - that God let one family start them and another family complete them."

Snowflake Adoptive Mother

"Few decisions in life are as important as deciding who should be trusted with the privilege of adopting and the responsibility of parenting a child. An adoptive homestudy not only screens potential parents, but more importantly, educates them about the lifelong issues of adoption."

Katherine Bertrand, LCSW
Agency Director

*From Solid Answers by James Dobson~© 1997 by James Dobson, Inc.

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Like snowflakes, each embryo is fragile, unique and the most beautiful of God's creations. In addition to your physician, you need to trust the people you choose to help you in these important decisions. If you would like to know more about Nightlight Christian Adoptions and our Snowflakes Program call us at (714) 278-1020 or e-mail us at: **info@Snowflakes.org**.

Christian Adoption &
Family Service

801 East Chapman Avenue
Suite 106
Fullerton, California 92831
714.278.1063

"A New Generation of Adopting Mother"

Adoption - a word that often brings emotions to the surface. Infertility. Domestic Adoptions. Birthmothers. International Orphans. Adopting Parents. Step-Parent Adoptions. Open Adoptions. The Bible talks about us being "adopted into God's family". Moses was adopted by the Pharoah's daughter. And yet, before we usually consider adoption, we are forced to deal with personal issues which make adoption a viable solution. Whether the issues involve our own inability to conceive a child or the recognition that there are children who need us as parents, we are brought back to the subject of adopting, loving and parenting a child that is not genetically related to us.

As you consider your options you should know that another method of adoption is now available - embryo adoption. By some estimates, there are over 100,000 frozen embryos in cryo-banks throughout the United States. Pre-born children waiting - waiting.

Genetic Parents now have the opportunity to choose adopting parents and relinquish their embryos for adoption and implantation in an adopting mother. Adopting Parents can now adopt and give birth to their adopted child.

Snowflakes. Genetic Parents want to select adopting parents from among families that have completed a home study with a licensed adoption agency. Families that are prepared to give birth to and parent a child that is not their genetic child. Families that understand the need for honesty with a child about the child's roots. Families who recognize the potential need of genetic parents to stay informed.

With almost 40 years of experience in adoptions, Nightlight Christian Adoptions is prepared to work with genetic families and adopting families in completing the cycle of life and building loving families. Although the legal framework for embryo adoption has not yet been established in most states, genetic and adopting parents can have the security of knowing that they are giving embryos the same safeguards and future opportunities as a child being placed in a more traditional adoption.

November 1, 2000

Mr. R. Martin Palmer
21 Summit Avenue
Hagerstown, MD 21740

Dear R. Martin,

Thank you for your letter. I appreciate your interest in my position on stem cell research.

Like you, I believe research into the causes and cures of diseases should be a priority in our country. And, that is why I have proposed a permanent Research and Development tax credit to encourage companies to continue research into life-saving treatments. I have also proposed infusing billions of dollars into the National Institutes of Health by doubling its federal funding so that we can continue to search for cures for diseases that are claiming the lives of too many Americans. We have the technology and the mission to find these cures. I want to make sure that the resources are available, as well.

I oppose federal funding for stem-cell research that involves destroying living human embryos. However, I do support innovative medical research on life-threatening and debilitating diseases, including promising research on stem cells from adult tissue, which does not necessitate destroying human embryos.

As the campaign moves forward in these remaining days, your thoughts and ideas are always welcome. I appreciate you taking the time to write.

Sincerely,

/s/George W. Bush
George W. Bush

www.GeorgeWBush.com
Post Office Box 1902, Austin, Texas 78767-1902 OFFICE
512-637-2000 FAX 512-637-8800
Paid for by Bush/Cheney 2000, Inc.

A Symphony of the
Preborn Child

Part I

(TENNESSEE FROZEN EMBRYOS)
COURT RULING AND TRANSCRIPT

Testimony of Dr. Jerome Lejeune

NAAPC
NATIONAL ASSOCIATION FOR
THE ADVANCEMENT OF PREBORN CHILDREN
P.O. Box 85
Hagerstown, MD 21740

PROLOGUE

An epoch-making trial took place in Blount County, Tennessee in August of 1989. Judge W. Dale Young of the Blount County Circuit Court was called upon to decide a case of first impression in the world. He presided over a domestic relations case in which a husband had sued his wife for divorce and at the same time had sought and obtained a temporary injunction preventing her from implanting frozen embryos conceived by them in an in vitro fertilization procedure undertaken earlier in the year. He said he did not want to be a father against his will. She said he already was a father. He had told her privately that if he got possession of the embryos he would destroy them. She told the judge publicly that if the embryos could not be given to her for implantation, she wished that they be given anonymously to another woman who could not conceive so that their preborn children might live.

Upon reading of the case for the first time in the Sunday paper of August 6th, I telephoned Jay Christenberry, Mary's attorney, in Knoxville, Tennessee,

and told him that the one man in the world who could help him as an expert witness was Dr. Jerome Lejeune, our current world father of genetics. Upon speaking with Dr. Lejeune on trans-Atlantic telephone and telling him of Mary's desire that the children go to another woman if she could not have them, he commented: "This is incredible. This is the judgment of Solomon. I did not think it could reoccur again in human history. It is reoccurring." He agreed to fly to the United States to testify in this little Tennessee courtroom to help Mary of Maryville, Tennessee, and her preborn children.

A rare moment took place in that little Tennessee courtroom as Dr. Lejeune took the stand and his testimony began to unfold. At the conclusion of his testimony, secretaries from the Judge's chambers, who heard his testimony only over the loudspeaker, flocked around him with the rest of the throng in the hallway to exclaim that he had painted a true "symphony of life." You, the reader, and the nation, have it in hand. A new chapter is about to unfold as a grand new moral essay exam is presented to our Republic at this time in our nation's history.

James Russell Lowell said it best:

> "Once to every man and nation comes the moment to decide, In the strife of Truth with Falsehood, for the good or evil side."

Judge Young has fired a shot, based upon science, that will be heard around the world. It is now up to the nation.

You hold in your hands history.

All agree that Dr. Lejeune is to the world of genetics as Einstein was to the world of physics. His testimony in the *Davis* case (Blount County, Tennessee, August 10, 1989) is to the deliberations of our state legislators, courts and U.S. Supreme Court as the letter that Albert Einstein wrote to

President Roosevelt regarding a new discovery on the splitting of the atom was to the future of energy. This testimony of Dr. Lejeune has figuratively split the atom of the humanity of the preborn child, and in so doing has released the tremendous energy of truth, which is circling the globe.

Just as man was given new respect for the atom, so man is now humbled in awe before the startling revelations of the very beginnings of preborn life-a human conceptus of a three-cell stage, which would fit on the tip of a needle and yet contains more information, perfectly organized, than would fit in one million NASA computers and which is differentiated as the constitution of this exact new human being immediately following fertilization-all information necessary to completely build himself, even the marvel of the human brain, capable of going to the moon, putting foot on the moon, or capable of building an NASA computer.

Dr. Lejeune's testimony is purely science, but it is science telling man a love story, for just as the splitting of the atom releases incredible energy and light, so man's splitting of the kernel of truth of the early beginnings of his own life has released a trillion-fold amount of energy and light and illuminated the source of that light, which is the real energy source of the entire universe: LOVE. The greatest force of the universe is and always will be LOVE.

Man having seen the light must respond in human love. All law disavowing the equal humanity of preborn children must change. The period of medieval darkness is forever over.

MARTIN PALMER, *Esq.*
October 1989

IN THE CIRCUIT COURT FOR BLOUNT COUNTY
STATE OF TENNESSEE
AT MARYVILLE, TENNESSEE

JUNIOR L. DAVIS,
Plaintiff,

vs. No. E-14496

MARY SUE DAVIS,
Defendant.

Transcript of excerpt of proceedings as had upon the trial of the above-styled cause before the Honorable William Dale Young, on the 10th day of August, 1989.

Reported by:
PEGGY M. GILES, C.C.R.
KNOXVILLE COURT REPORTING
P.O. Box 9112
Knoxville, Tennessee 37940
615-573-9300

APPEARANCES:
FOR THE PLAINTIFF:
Charles Clifford
Attorney at Law
117 E. Broadway
Maryville, Tennessee

FOR THE DEFENDANT:
J. G. Christenberry
Attorney at Law
9th Floor
603 Main Avenue
Knoxville, Tennessee

THE COURT: For the record, ladies and gentlemen, let the record reflect that prior to these proceedings being placed of record, that the Honorable Martin Palmer, a member of the Maryland Bar, had been introduced to the Court and welcomed, and that Dr. Lejeune, a witness in this case, had been given the oath to testify. Is there any need, gentlemen, to readminister the oath for the record?

MR. CLIFFORD: No, your Honor.

MR. CHRISTENBERRY: No, your Honor.

THE COURT: You may proceed.

The Witness,

JEROME LEJEUNE, M.D., having been first duly sworn, testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. CHRISTENBERRY:

Q. Would you state your name for the record, please, sit?
A. My name is Jerome Lejeune.

Q. And to help the court reporter if she doesn't understand the French pronunciation
you spell your name, J-E-R-0-M-E, capital L, little e, little j, E-U- N-E?
A. Perfect.

Q. Thank you. Dr. Lejeune, from your accent, I take it that you live elsewhere than East Tennessee?
A. Well, born on the river of the Seine, you know.
Q. And that is probably situated in another country, I hope?

A. It's a little country called France, and the little town is Paris.

Q. Thank you, Doctor. I guess you're a French citizen?
A. I'm French citizen, Parisian born.

Q. And you've traveled to this country, to Maryville Tennessee, to offer what you have as a witness in this trial?
A. Yes.

Q. Okay. Tell us, Doctor, What you do, what your profession is. A. I am a M.D., that is Doctor in medicine, I'm also a Ph.D., Doctor in science, and after getting my degree in the University of Paris in medicine and also in genetics in the Sorbonne, Faculty of Science, I was research worker for ten years, and then I was appointed professor of fundamental genetics in the Faculty of Medicine of Paris. My special field is children, all the constitutional diseases of children, and more especially mental retardation.

Q. Okay. Doctor, you practiced medicine, I take it, as maybe a pediatrician?
A. Well, I started as a pediatrician, but I specialized In genetics, and we have the biggest consultation of the world in *l'Hospital des Enfants Malades*, Sick Children Hospital in Paris. We have the biggest consultation of the world for children with mental retardation due to congenital diseases due to chromosomal mistakes.

Q. Have you been an educator as a result of your background? Have you been a teacher?
A. Well, I have been professor of fundamental genetics now for twenty years, but I began my first teaching was not in France, it was in America. I was invited by Professor Beadle in Caltech, California Institute of Technology. It was just before I discovered the first diseases of man—first chromosomal diseases in man, but I was already involved in

medical genetics, and Beadle invited me to give the first course of human genetics in Caltech. That was long ago. At that time my English was even rougher than it is today, and I came with all my course written in French. In the evening I was translating them with the dictionary, and in the morning I was delivering the course to the students. They were very kind, they helped me very greatly. That is the way I have learned to speak English, and I hope the way they have learned a little about human genetics.

Q. You remember the year that you went to Caltech?
A. Well, it was in '58.

Q. Did you remain there for some time as a professor?
A. I was a visiting professor from the OTAN, professorship from the OTAN; NATO, you say NATO, excuse me.

Q. You have been accredited with helping in human genetics with identification of some chromosome; will you tell us what that is about?
A. It happens that I discovered the first disease due to a chromosomal mistake in man which is Down's Syndrome which was called previously Mongolism because these children have a special odd look which is a little remembering for European some type of the Mongol features. But in Mongolia they don't like to call the disease Mongolism, they call it European Imbecility. I discovered that they had one chromosome too much. That was long ago, thirty-two years, if I calculate well, and for that discovery I received the Kennedy Prize from the late president here in United States. And also for that discovery, I got William Allen Memorial Award which is the highest award that you can get in genetics in the world. It's given also in United States.
Q. I see. Have you followed with your genetic discovery even as you sit here today? Have you continued to study?
A. Oh, yes.

Q. Could you probably give us an enlightenment on what's happened over thirty-two years?
A. Well, I want not to speak too much about myself, it's not the subject. But we have discovered ten different diseases due to chromosomal errors, and I would say the first chapters of this enormous pathology was written in French by us. Now, we are dealing with mechanisms of mental retardation due to chromosomal diseases, and we are beginning to understand why having one chromosome too much, that is, normal information but repeated, makes a nuisance for the development of the intellect. And, for example, very recently we demonstrated that in trisomy twenty-one, Down's Syndrome, previously called Mongolism, the cells of the children are more sensitive to some drugs which are used against cancer. It seems totally unrelated, but, in fact, it's defining a new field of research, because very likely this peculiarity is related to a deficiency in a chemical system which is used especially in our neuron, and it's probably one of the main reasons why they do not develop a normal intelligence. So, for the moment, you asked me what we are doing now: We are working on this particular hypothesis because it allows us to make experiments on cells, taken from the children, we cultivate, and we can manipulate, we deprive them, we follow them and we play with them, and we use a lot of drugs to see how they react, and that is the first time we can make experiment in human cells so that to try to cure a neuronal disease, a nervous disease, so it's a very exciting field, but the job is not yet finished.

Q. I trust you can do all that without harming the children?
A. Oh, well, you just take a few drops of blood, and you cultivate the cells, make cultures. We play with the cell: we do not play with the child.

Q. Thank you, Doctor. I understand you're on the boards of various academies in this world. Could you tell us about that?
A. I have the honor of being a member of the American Academy of Arts and Science, I'm member of the Royal Society of Medicine in London, Royal Society of Science in Stockholm, of the Science Academy in Italy, in Argentina. I'm a member of the Pontifical Academy of Science, and I'm a member in Paris in the *Institut de France of the Academie des Sciences Morales et Politiques*, that is, of Moral and Political Sciences, a special academy in France; and also the Academy of Medicine in France.

Q. The Academy that deals with moral and political sciences—
A. Yeah.

Q. Tell us what that academy's function is about, doctor.
A. That academy was made around two hundred years ago to give advice to the government about moral and political questions, and essentially to give advice to the government about the use of new techniques, considering that the respect of man is one of the bases of our constitution. We have five academies in the Institute de France, it's, one of them.

Q. And then you mentioned another that gave me some interest. You said the Pontifical Academy, where is that academy located?
A. The Pontifical Academy of Science is located inside the gardens of the Vatican, a very nice location. We are seventy members and no more than seven of any country, so that we're coming from all the world around. Our percentage of Nobel Prize is more than sixty percent. There is no difficulty because we choose the members in the whole earth, and so it's not difficult to choose good ones. The interest is many of them have been selected by another committee long after

they had been elected by our academy. I would say it's the only scientific international academy of science, the only one which is truly inter-national.

Q. How long have you been on that academy?
A. Twelve years if I remember well, something like that.

Q. Tell us a little bit about the topics or research that is done there. What have you all considered?
A. In the academy?

Q. Yes, sir.
A. Well, for example, we are given the question: What is danger of the use of atomic energy? For example, we had four sessions about the danger of atomic weapons and their numbers, the use of them, the possibility of survival of humanity after an atomic war and how medicine could do something. And when we did the report, the Holy Fathers asked the academy to designate members to produce that report to the powers who head the atomic power. It was sent to-in Moscow, to the late Mr. Brezhnev. This was a very interesting interview during one hour discussing with Mr. Brezhnev in the Kremlin about the danger that humanity would feel if there was an atomic exchange.

Q. Did you find that interview interesting to say the least with Mr. Brezhnev?
A. I'm not a diplomat, I'm just a scientist, and it was very interesting for me, at least.

Q. I understand that in this country, you're familiar with our man that is in charge of our health and welfare of all the citizens of this state?
A. C. Everett Koop, yes, we are good friends. I know him since long.

Q. How long have you known him now?
A. I'm not good at counting the number of years, I know people-maybe fifteen years, something of that kind.

Q. Do you visit with him and speak with him?
A. Yes.

Q. Does he call your bureau or your agency or your scientific—on the phone in Paris?
A. No, we have discussions when we meet together. We don't use phone for very important matter. It's better to have a chat.

Q. What are his interests in you? In other words, what areas have you all chatted about?
A. Human genetics, which is my field.

MR. CHRISTENBERRY: I believe at this time, your Honor, I would ask the Court to recognize Dr. Lejeune as an expert witness in the field in which he's here to testify.

THE COURT: Any objection?

MR. CLIFFORD: Your Honor, we certainly recognize Dr. Lejeune's expertise in the field of genetics.

THE COURT: All right, he's qualified.

MR. CHRISTENBERRY: Thank you, your Honor.

BY MR. CHRIS-TENBERRY:

Q. Dr. Lejeune, as you sit here today, it's fair to say you have come quite a distance, is it not, sir?
A. Pardon!

Q. It's fair to say you have come quite a distance to testify today, is it not?
A. Well, it's not that far, you know. I have been farther than that.

Q. You're familiar with the issues, the profound issues this Court is considering, aren't you. Doctor?
A. Yeah, and that is the reason why I accepted to come.

Q. Thank you. With respect to the issues in this case, you understand the-what we would say is the factual understanding of how Mr. Davis feels and how Mrs. Davis feels. There has been some publicity about this, has there not, Doctor? You have heard something about their dilemma?
A. I heard something, but very little. I must be very honest, I don't look at television, I don't listen to the radio, and I only knew when Mr. Palmer telephoned to me, that was the first time I heard about it. So I would not say I'm really knowing the whereabouts, no. I know there are babies, there are human beings in the fridge, this is the only thing I know.

Q. Thank you, Doctor. So let's start with that aspect of this case. You're familiar with in vitro fertilization?
A. Yes.

Q. When did you write your first article about it, if you recall?
A. Oh, you are terrible with dates; I'm not good with the answers. It must be fifteen years ago, something.

Q. Okay.
A. Before it was used.

Q. Before it was used. So before it was used it had been conceived in man's mind, had it not?
A. Well, you have to understand that artificial fertilization is something rather old in biology, and it was used for animals

long before it was applied to man. And what seems today extraordinary, that is freezing a human embryo, it was not extraordinary for a cow. There is a lot of time that cows have been frozen and used and sent by air mail in little containers. And the novelty is to consider that the technique which was devised for husbandry was good enough for mankind.

Q. Tell us about in vitro fertilization and your view of it and your perspective that you could offer today.
A. Well, could I speak more about nature—

Q. Yes.
A. —of the human being, than specifically the condition in vitro, because to understand what means the fertilization in vitro, we have to understand what means fertilization at the beginning of a human being.

Q. All right.
A. And if I can say so, I would say that life has a very long history, but each of us has a unique beginning, the moment of conception. We know and all the genetics and all the zoology are there to tell us that there is a link between the parents and the children. And this link is made of a long molecule that we can dissect the DNA molecule which is transmitting information from parents to children through generations and generations. As soon as the program is written on the DNA, there are twenty-three different pieces of program carried by the spermatozoa and there are twenty-three different homologous pieces carried by the ovum. As soon as the twenty-three chromosomes carried by the sperm encounter the twenty-three chromosomes carried by the ovum, the whole information necessary and sufficient to spell out all the characteristics of the new being is gathered.

Q. Is what, sir?
A. Gathered.

Q. Gathered.
A. Gathered. And it's very interesting, if I can say, your Honor, to remark that natural sciences and science of the law, in fact, speak the same language. In that sense that when we see somebody healthy, well built, we say he has a robust constitution, and when we see a country in which every subject is protected by the law, we say it has an equitable constitution. In the phenomenon of the writing a law, you have to spell out every term of the law before it can be considered to be a law, I mean in the science of the law. And secondarily, this information written in the law has to be enacted, and it cannot be before it has been voted for. Now, life does exactly the same thing. Inside the chromosomes is written the program and all the definitions. In fact, chromosomes are, so to speak, the table of the law of life. If you get the right number of your table of the law of your life, then you begin your own life. Now, the voting process does exist as well. It is the fertilization itself, because there are a lot of proposals, many, many sperms. Only one got in; that is the voting process which enact the new constitution of a man. And exactly as would say a lawyer, once a constitution exists in a country, you can speak about it in the same way, when this information carried by the sperm and by the ovum has encountered each other, then a new human being is defined because its own personal and human constitution is entirely spelled out. There exists a lot of minute differences in the message given by father and the one given by mother, even by the same person; we do not give exactly the same minute information in each sperm or in each egg. It follows that the voting process of the fertilization produces a personal constitution which is entirely typical of this very one human being which has never occurred before and will never occur again. It's an entire novelty. That was sure—that was known for let's say

not a hundred years but more than fifty years. But the bewildering was the minuteness of the writing of those tables of the law. You have to figure out what is a DNA molecule. I would say it's a long thread of one meter (sic) of length, cut in twenty-three pieces. Each piece is coiled on itself very tightly to make spiral of spiral of spiral so that finally it looks like a little rod that we can see under the microscope that we call a chromosome. And there are twenty-three of them carried by father, twenty-three of them carried by mother. I said the minuteness of the language is bewildering because if I was bringing here in the Court all the one meter long DNA of the sperms and all the meter long of the ovums which will make every one of the five billions of human beings that will replace ourselves in this planet, this amount of matter would be roughly two aspirin tablets. That tells us that nature to carry the information from father to children, from mother to children, from generation to generation has used the smallest possible language. And it is very necessary because life is taking advantage of the movement of the particles, of molecules, to put order inside the chance development of random movement of particles, so that chance is now transformed according to the necessity of the new being. All the information being written they have to be written in the smallest language possible so that they can dictate how to manipulate particle by particle, atom by atom, molecule by molecule. We have to be with life at the real cross between matter, energy and information. Now, I would like, your Honor, to give you an impression of what happens normally. Most of the human beings have been conceived before the fertilization in vitro was used, and most of the humanity will still be made the old good days' fashion for a long time I do hope. Normally, when the ovum is ripe, that is, once a month, fifteen days after the menses, there is a rupture of the follicle, and the ovum is so to speak taken by the fallopian tube, which has a special expansion—we call it *le pavillon*—I don't know the name in English. And it can

move, and if you take a picture it looks like as a hand making a slow palpation of the ovary to find where the egg will be laid and to take it. Normally, the egg is a big cell, round, not mobile, floating quietly inside the fluid in the tube, and the tube will manage to carry this big cell towards the uterus by ciliate movements. On the contrary, the sperm is an indefatigable navigator. It has been deposited in the entry of the genitalia of the mother, and normally it goes up through the cervix of the uterus, he swims during the whole uterine cavity, and it is inside the fallopian tube that the encounter between few thousands, ten thousands, hundred thousands of sperm and the one egg can occur. And it is because every human being has been conceived in nature inside the little tube, a tube of flesh that we call the fallopian tube, that test tube babies are indeed possible. The only difference is that sperm and egg are meeting inside a tube which is now a tube of glass because the egg has been removed from the body of the woman, and the sperm has been just added to the little vessel. And it's because normal *fecundation*—I should say fertilization in English—normal fertilization is occurring inside a tube that if you put the proper medium ... It is not at all the inseminator who makes fertilization, he just puts on the right medium, a ripe ovum, active sperm, and it is the sperm who made the fertilization. Man would be unable to make a fertilization. It has to be done directly by the cells. And it's because they were normally floating in the fluid that this extracorporeal technique is at all possible. Now, the reproduction process is a very impressive phenomenon in the sense that what is reproduced is never the matter, but it is information. For example, when you want to reproduce a statue, you can make a mold and there will be an exact contiguity between the atoms of the original statue and the atoms of the mold. During the molding process there will be again between the plaster and the mold contact atom by atom so that you reproduce the statue. But what is reproduced is not the original because you can make it out of plaster, out of

bronze, about anything. What is reproduced is the form that the genius of the sculptor had imprinted in the matter. The same thing is true for any reproduction whether it is by radio, by television, by photography, what is printed or reproduced is the information and not the matter. The matter is a support of the information. And that explain to us how life is at all possible, because it would be impossible to reproduce matter. Matter is not living, matter cannot live at all. Matter is matter. What is reproduced and transmitted, it's an information which will animate matter. Then there is nothing like living matter, what exist is animated matter. And what we learn in genetics is to know what does animate the matter, to force the matter to take the form of a human being. To give you an idea, I would take a very simple example, I would take the example of this little apparatus here, a recorder.

Q. Yes, sir.
A. Now, chromosomes are a long thread of DNA in which information is written. They are coiled very tightly on the chromosomes, and, in fact, a chromosome is very comparable to a mini-cassette, in which a symphony is written, the symphony of life. Now, exactly as if you go and buy a cartridge on which the *Kleine Nachtmusik* from Mozart has been registered, if you put it in a normal recorder, the musician would not be reproduced, the notes of music will not be reproduced, they are not there; what would be reproduced is the movement of air which transmits to you the genius of Mozart. It's exactly the same way that life is played. On the tiny minicassettes which are our chromosomes are written various parts of the opus which is for human symphony, and as soon as all the information necessary and sufficient to spell out the whole symphony, this symphony plays itself, that is, a new man is beginning his career. In vitro fertilization does not change at all what I have said. It's just a technique sometime used to bypass a difficulty in the encounter of the egg and the sperm, so it's

a-it's a derivation. It does not change at all the basic mechanism, the basic mechanism is just the same. Now, if I could continue a little more, it's not about fertilization that we are discussing. It's about freezing of embryos. I'm not a specialist at freezing embryos. Your Honor, I have never played with embryos. But in my laboratory we are freezing cells, we are thawing them, we are using a lot of those process, so we know about it, we use it on another system than embryos, but all cells are very similar in their reactions. Now, you have to realize —I don't know if it is true in English, but I think it's quite true, and it is true at least in all the Latin language, we use the same word to define the tempo that we measure with a clock and the temperature that we measure with a thermometer. We say in French *temps* and *temperature;* in English you say time which is a change of tempo, which a temporal thing, and temperature. And that is not a mistake of the ordinary language, it's a definition of the basic phenomenon. I don't know how they have recognized it so long ago to build it into the language. What means "time" is the flux of the agitation of the molecule, the flux of the particle which is continually going on. And temperature is just a measure of the speed with which the molecules are running in a given medium. Now, if you diminish progressively temperature, you diminish the speed and the number of collisions between the molecules, and so to speak without any joke about the words, you are progressively slowing down, slowing down the temperature, you are freezing time. And, in fact, we are wrong telling that we are freezing embryos. In a sense it's very true like you deep freeze the meat in the supermarket, very correct. But in the fundamental sense what we are doing by lowering down the temperature is stopping not totally but very deeply the movements of the atoms and molecule so, in fact, inside the can, the thermal can in which we put in tiny canisters the cells or the embryos, we have more or less arrested the flux of the time. This seems to be rhetorical, but it is not because otherwise we could never

understood why it is possible to freeze a cell, to have it entirely not moving, not respirating, not having any chemical exchange, and just if you have done it with precision (so that no crystals have been made inside the cells which could have ruptured its very minute architecture), if you thaw it, thaw it progressively and carefully, it will again begin to flourish and to divide. Then it's obviously sure that we have not arrested life and started life again. What we have arrested is the time for this particular organism which is inside this can. If we could put a cell down to the minus two hundred seventy-three centigrade, that is, to the absolute zero, every movement would be stopped. And if the temperature would be maintained at that level, it would be kept unchanged for indefinity. I would not say eternity but indefinity. We are not achieving that when we freeze a cell in my laboratory (and you do the same here); we use not liquid hydrogen because it's very costly and very explosive, and it's used only in NASA for the rockets. We use mostly liquid nitrogen because it cannot explode, and it's rather cheap, and it's easy to manage. But it's only minus a hundred ninety degrees that we have inside the canister. Well, it's rather cool, but it's not absolute zero, so the preservation is not a hundred percent. And probably you could not preserve the cells for more than a number of years, that nobody knows because it depends on the cells. For example, to the best of my knowledge for ordinary cells which are very resistant, they are examples of more than fifteen years in the canister and being thawed and being correctly surviving and alive. For mouse embryo it's some ten years. In our species I think there are no long time, maybe one or two years, no more than that. And nobody knows with the actual technique how long the preservation would be real preservation. It's a question I could not answer, and I think nobody can answer precisely today. But what I could say, that the information which is inside this first cell obviously tell to this cell all the tricks of the trade to build herself as the individual, this cell is already. I mean it's

not a definition to build a theoretical man, but to build that particular human person we will call later Margaret or Paul or Peter, it's already there, but it's so small that we cannot see it. It's by induction that we know it for the moment. And I would say I would like to use the felicitous expression of the mathematicians. They would say that man is reduced at its simplest expression like you can do with an algebraic formula if you manipulate it intelligently. If you want to know what mean that formula you have to expand it to give value to the various parameters, and to put in use a formula, you expand it. It's what is life, the formula is there; if you allow this formula to be expanded by itself, just giving shelter and nurture, then you have the development of the full person. Now, I know that there has been recent discussion of vocabulary, and I was very surprised two years ago that some of our British colleagues invented the term of pre-embryo. That does not exist, it has never existed. I was curious, and I went to the encyclopedia, to the French encyclopedia, the one I inherited from my great father so it was fifty years ago it was printed. And at the term of embryo it was said: "The youngest form of a being," which is very clear and simple definition, and it stated: "it starts as one fertilized cell, (fertilized egg which is called also zygote), and when the zygote splits in two cells, it is called a two-cell embryo. When it split in four it is called a four-cell embryo." Then it's very interesting because this terminology was accepted the world over for more than fifty years by all the specialists of the world, and we had no need at all of a sub-class which would be called a pre-embryo, because there is nothing before the embryo. Before an embryo there is a sperm and an egg, and that is it. And the sperm and an egg cannot be a pre-embryo because you cannot tell what embryo it will be, because you don't know what the sperm will go in what an egg, but once it is made, you have got a zygote and when it divides it's an embryo and that's it. I think it's important because people would believe that a pre-embryo does not have the same significance that an

embryo. And in fact, on the contrary, a first cell knows more and is more specialized, if I could say, than any cell which is later in our organism. Now, I don't know if I can abuse of your patience, your Honor?

THE COURT: You're doing fine.

THE WITNESS: The very young human being, just after fertilization, after it has split in two cells and then in three cells because curiously we do not split ourselves in two, four, eight and continue like that, no, at the beginning we don't do that. We split in two cells of roughly equal dimension and one of the two cells splits in two. There is a moment in which inside the zona pellucida which is a kind of plastic bag, which is, so to speak, the wall of the private life of the embryo in which it is protected from the outside, we have a stage in which there are three cells. This has been known for fifty, sixty years, and it was remaining a mystery for embryology, because after that stage of three cells, it starts again, it comes to four, and it continue by multiples of two. What could be the meaning? We do not know yet the accurate meaning, but it is of great importance about the discussion we have today because we can manipulate non-human embryos like, for example, mices. We can disassemble the cells which are inside the zona pellucida of a sixteen cell embryo of mice and take few cells of it, take few cells from another embryo, of another type of embryo, if you wish, and put all that together inside a new zona pellucida from which you have expelled the legitimate occupant. Now, what happens? Most of the time it fails, but sometimes a chimera comes out. For example, if you have chosen a black embryo, a white embryo and you have mixed them together, you find a little tiny mouse which can run on your table but which has a chessboard on the body. Parts are black, parts are white because she has built herself of two type of cells that you had put together in the same zona pellucida. It has to be done with a very small number of

cells. We have tried, and when I say we, I should say geneticists, have tried to put three different lines, and they have got few mice with three different type of cells that they can see on the fur. They have tried four, does not work; five, does not work. It's only possible with three cells. And that remembers that when we split at the beginning of our life (two cells and then one cell in two), we go at a three cell stage. It's probably at that time that a message goes from one cell to the two other cells, come back to the first one and suddenly realize we are not a population of cells. We are bound to be an individual. That is individualization, that makes the difference between a population of cells which is just a tissue culture and an individual which will build himself according to his own rule, is demonstrated at the three cell stage, that is very soon after fertilization has occurred. If we stop the process, if we slow down the movement of the molecules, we progressively come to a relative standstill, and when the embryo is frozen, these tiny human beings, they are very small, one millimeter and a half of a dimension, a sphere a millimeter and a half, you can put them in canisters by the thousands. And then with the due connotation, the fact of putting inside a very chilly space, tiny human beings who are deprived of any liberty, of any movement, even they are deprived of time, (time is frozen for them), make them surviving, so to speak, in a suspended time, in a concentration can. It's not as hospitable and prepared to life as would be the secret temple which is inside the female body that is a womb which is by far much better equipped physiologically, chemically, and I would say intellectually than our best laboratories for the development of a new human being. That is the reason why thinking about those things, I was deeply moved when you phoned to me, knowing that Madame, the mother, wanted to rescue babies from this concentration can. And to give to the baby—I would not use term baby, it is not perfectly accurate, not good English—would offer to those early human beings, her own flesh, the hospitality that she is the

best in the world to give them. And because Mr. Palmer told me on the phone that it had been said that if you, Madame, were not entitled to give this shelter to the baby-to the early human beings, (beings perfectly correct in what I mean)—you would prefer that they would be enjoying another shelter and not being left inside the concentration can, or destroyed. And I was impressed because it remembered me of an extraordinary trial which has occurred more than two thousand years ago, and I could not believe it could occur again, that two persons will discuss whether it's better to have an early human being alive and given to a certain person or another person would prefer the baby not being alive at all. And to the best of my recollection this judgment has been considered as a paragon of justice when Solomon did it. I was not thinking I would come from Paris to speak in Tennessee about a two thousand years old trial. But I realized when you phoned to me, it was the first time it was arising in this earth with a very early human being, because before early human beings were not in our reach, they were protected inside the secret temple. And then I felt it was opportunity that a geneticist was going to tell you what our own science tells us. If this trial had taken place two years before, I would have stopped because I would have told you all that we knew at that moment. But with your per-mission, your Honor, I will continue a little further, faster and faster.

THE COURT: Yes.

THE WITNESS: We know much more, since the last two years, we know that the uniqueness of the early human being I was talking at the beginning, which was a statistical certainty (but an inference of all we knew about the frequency of the genes, about the difference between individuals) is now an experimentally demonstrated fact. That has been discovered less than two years ago by Jeffreys in England, the remarkable manipulator of DNA. And Jeffreys invented that he could select a little piece of DNA,

of which he could manufacture a lot of it, which is specific of some message in our chromosomes. It is repeated a lot of times in many different chromosomes and which is probably a regulation system. Some indication to do something or do another thing, but not a kitchen recipe, but a precision about what to do. And because its only telling the cells that this should work and this should not work, it can assume a lot of tiny change, so that there are so many of those little genes and there are so many little changes in them that we receive from father and from mother an array of those genes that we can realize very simply, you get the DNA, you put it in solution and you have it spread in a special medium. Then you put this special probe made by Jefferys, and what you see it looks exactly like the bar code that you have probably seen in the supermarket, that is, small lines of different breadth and different distance from each other. If you put that bar code and you read it with an electronic device, it tells the computer what the price of the object and tells a lot of other things. Well, its exactly what it tells us that when we look at the DNA bar code, and we detect every individual is different from the next one by its own bar code. And that is not any longer a demonstration by statistical reasoning. So many investigations have been made that we know now that looking at the bar code with his Jeffreys system, the probability that you will find it identical in another person is less than one in a billion. So it's not any longer a theory that each of us in unique. It's now a demonstration as simple as a bar code in the supermarket. It does not tell you the price of human life, it has a difference with supermarket. The second advance has been that we know now that in one cell we can detect its originality. That has been due to the discovery of a new system which is called PCR, which is becoming extraordinary popular. It started two years ago, You can take a tiny piece of DNA, one molecule taken from one cell, you see how little this is, you can with that technique reproduce it by billions, and when you have enough you

can make the analysis of Jeffreys and see again that we have the whole demonstration of uniqueness, not only in a sample taken from the individual, but in one cell, in one nucleus of one individual. Another is a third discovery which is by far the most important of all, which is that DNA is not as dull as the magnetic tape I was talking before. Nature is imitated by our discoveries, but she has known much more than we have yet discovered. In that sense, that the message written on DNA is written by change of the various bases which come one after the other in that one meter long molecule. But now it happens that twenty years ago it was described with certainty that some of the bases of DNA were carrying an extra little piece we call a methyl, (which is CH3) which is just hooked on it and change a little of the form of one of the bars of this long scale which is the DNA molecule. Nobody understood what it was meaning. And it's only four years ago (especially by the discovery of Surani) that we have begun to understand that we were up to something extraordinary, which is that those tiny little bits of methyl which are put on the base, cytosine, which is transformed in methyl-cytosine— I'm sorry to be technical, your Honor, but I cannot translate it, it's chemical slang.

THE COURT: I understand.

THE WITNESS: Is exactly comparable to what does an intelligent reader when he wants with a pen to underline, to highlight some passage or to scratch, delete another sentence. That is with the methylation, one gene which is still there is knocked out, put to silence, but if it is demethylated on the next division, on the next cell, then it will speak again. Now, the basic discovery was that this is possible because this tiny change on the DNA, changes the surface of the big groove of the helix of DNA. It is inside this big groove that some molecules, some proteins will hook on different segments specific of the DNA. It is a kind of language telling to the chromosome: You have to tell this

information or for this information, shut up, do not speak this one for the moment. It's very necessary, because there is so many information in our cells that if they were expressing everything, every time, to have the energy spent by one cell would be much more than the energy of our whole body. So it's necessary that we have some silent gene and some gene giving expression, expressed. Now, the basic discovery is the following, and it is directly related to our discussion: That the DNA carried by the sperm is not underlined (or crossed) by this methylation on the same places which are not equivalent in the DNA chromosomes carried by ovum. During the manufacture of the sperm there are indications, it's penciled, so to speak. It's underlined, you should do that. But on the equivalent gene, on the equivalent chromosome manufactured by the mother, the underline is in a different place, and it underlines something different. So that at the moment the two sets of chromosomes carried by the sperms and the egg are put together, they are not as we believed for years identical. We knew there was a difference with the "X" and "Y" chromosomes, but for the others they were believed to carry the same information; that is not true. Some information is to be read on as coming from the male chromosome, and another information from a chromosome coming from the mother. Now, the reason is that the fertilized egg is the most specialized cell under the sun because it has a special indication underlining segments of DNA which shall be expressed and others that shall not be expressed that no other cell will ever have in the life of this individual. When it's split in two we know that exchange of information comes from one cell to the other one. When it's split in three it receives information we are an individual. And when it continues progressively, the underlining system is progressively changed so that cells do differentiate, and cells become specialized doing a nail, doing hair, doing skin, doing neurons, doing everything. And the very thing is that during this process, the expansion

of the primary formula which is written in the early human being, nothing is learned but progressively a lot of things are forgotten. The first cell knew more than the three cell stage, and the three cell stage knew more than the morula, than the gastrula, than the primitive streak, and the primitive nervous system. In the beginning it was written really not only what is the genetic message we can read in every cell, but it was written the way it should be read from one sequence to another one. Exactly like in the program of a computer, you don't put only the equivalent of the Algebraic formula, but you tell to the computer do that; if you get that result, then go at that and continue that program; or if you don't get the result, continue and go to the other program. That is written in the first cell; is progressively forgotten in the other cells of our body. At the end of the process when the organism has grown up, it produce then its own reproductive cells, it puts the counter to zero again, and hence the rejuvenation. A new life will begin when a female and a male cell will encounter to produce the next generation. So I would say very precisely, your Honor, that two years ago I would not have been able to give you this very simple but extremely valuable information which we have now, beyond any doubt. I would give you an example of why it's not theoretical. We can manipulate with mice—not me, but my colleagues. And with mice they have been able to make pseudo zygote, that is, to take one egg, expel its own legitimate nucleus and put, for example, two nuclei coming from sperm, so they have diploid cell, a diploid zygote containing only two sets of paternal origin; it fails to grow. They have tried to do it with two maternal original nuclei, that is, two maternal chromosomal cells and no paternal cells. It's diploid; by the old theory it should grow, but it does not. But curiously both of them do something; they don't build a full imago, that is, the whole form. But they specialize. If there is only male nuclei, two male nuclei making what is called an androgenote, it produce little cysts which are looking like

the membranes and placenta that the child is normally building around himself to make its space and time capsule so that it could take the fluid from the mother vessels. An early zygote containing only male chromosome does only that. If a zygote contains only chromosomes from female origin, it makes the spare parts. It makes pieces of skin, it makes piece of teeth, it can make a little nail, but all that in a full disorder, not at all constructed it makes the spare parts. We know this directly by experiment in mice done by Surani last year. But we knew that but we could not understood it before. We knew that already in man, because in man we know that there are what is called dermoid cysts which is a division of a non-fertilized egg inside the ovary of a virgin girl. It cannot grow. It's rare, but it is well known. It will never give a little baby, but it makes the spare parts, teeth, nails, all that mixed in incomprehensible disorder. On the reverse we knew that sometime after apparently normal fertilization the product does not divide correctly but makes cysts, little balls again and again and again, and it's called a mole, hydatidiformis mole, and it's very dangerous because it can give the cancer to the pregnant woman. Now, we have discovered—(not me), you have to know I'm professor and when I say we, it's all the professors of the world, it's not me. We have discovered that in those hydatidiformis moles, there were only paternal chromosomes. There were two sets of paternal chromosomes and the maternal pronuclei had died, we don't know why. So we know by the mice experiments that it is related to methylation of the DNA. Hence, we know by the human observation, that there is a specialization of information carried by the sperm compared to the information carried by the ovum. And I would say I was wondering, not surprised, but wondering that we were discovering at this extraordinarily tiny level of information built into the chromosomes, that paternal duty was to build the shelter and to make the gathering of the food, to build the hut and the hunting. And that the maternal trick was household and building of the spare parts so the individual

can build himself. And it's a kind of admiration that we have for nature that since we have seen in the grown up that the man is going hunting and the mother is doing the kitchen, it is just the same deeply written inside our own chromosomes at the very beginning at the moments the first human constitution is spelled out. Well, I have abused your kindness, your Honor. I have spoken maybe too much, but I would say to finish that there is no, no difficulty to understand that at the very beginning of life, the genetic information and the molecular structure of the egg, the spirit and the matter, the soul and the body must be that tightly intricated because it's a beginning of the new marvel that we call a human. It's very remarkable for the geneticist that we use the same word to define an idea coming into our mind and a new human coming into life. We use only one word: Conception. We conceive an idea, we conceive a baby. And genetics tell us you are not wrong using the same word; because what is conception? It's really giving information written in the matter so that this matter is now not any longer matter but is a new man. When we come back to the early human beings in the concentration can, I think we have now the proof that there are not spare parts in which we could take at random, they are not experimental material that we could throw away after using it, they are not commodities we could freeze and defreeze at our own will, they are not property that we could exchange against anything. And if I understand well the present case and if I can say a word as geneticist, I would say: An early human being inside this suspended time which is the can cannot be the property of anybody because it's the only one in the world to have the property of building himself, And I would say that science has a very simple conception of man; as soon as he has been conceived, a man is a man.

THE COURT: Before we go further, let's take a break, a very brief break, actually a little longer one than we usually do. As most of the representatives of the media know, there is

some hospitality being furnished you by the Blount County Chamber of Commerce. I want you to have an opportunity to enjoy that if you care to, so we will stand in recess about twenty-five or thirty minutes at which time our testimony will resume, Parties may excuse themselves and Dr. Lejeune you may come down. (Parties and counsel leave the courtroom.)

THE COURT: Ladies and gentlemen, we'll stand in recess. (Brief recess.)

THE COURT: Dr. Lejeune, if you would come around and take the witness stand. Mr. Christenberry.
MR, CHRISTENBERRY: Thank you, your Honor.

BY MR. CHRIS-TENBERRY:

Q. Dr. Lejeune, suppose that—as a hypothetical question, but suppose that we had heard testimony in this hearing that indicated that each mom and each dad contribute identically the same to the embryo, and that there is no differentiation between their contributions, could you tell us what your opinion is about whether or not cells are differentiated?
A. It's difficult to answer that because once you know something in science, it's very difficult to tell what you would think if you were not knowing it. If the paternal and maternal chromosomal share of the baby was the same, we wouldn't have any idea how this differentiation of cells do occur, so if I had testified two years ago, I would have said that the mystery of cell differentiation was complete, and we did not know where it was written. Now we begin to know where it's written. It's the only difference, but it's a great difference that we begin to know. It tells us definitely that what was an implication that it must be written in the first cell, (this type of differentiation must occur at this time and at the other time another differentiation should occur). We

knew it should have been written, but we did not know at all how it was.

Q. Okay. And so you testified at great length about the differentiation.
A. Yeah.

Q. And you did that for what purpose?
A. For the purpose of' understanding how from an apparently undifferentiated cell which is the one cell of the fertilized zygote, the full imago can emerge. If science cannot say anything about the mechanism of it, it just remains a pure constitution but no knowledge about it. It's the reason why I wanted to put on record those new findings about the methylation of DNA, because it proved that the implication which was as all of genetics, that differentiation is, so to speak, prewritten in the first cell, is now having an understandable physical support. Now, it cannot be said that the first cell is a non-differentiated cell. It must be said now the first cell is knowing how to differentiate the progeny, the cell progeny.

Q. Okay. And for me to understand
A. To make it clearer, if I am looking at the mass of cell growing, I know by my own experience in my lab for twenty years that never a baby will form itself in our bottles because we are growing cells taken from the body. On the contrary we know that if the cell which is dividing is a fertilized zygote, a new individual is Just now beginning to emerge.

Q. What ethical considerations do you have about freezing?
A. I think love is the contrary of chilly. Love is warmth, and life needs good temperature. So I would consider that the best we can do for early human beings is to have them in their normal shelter, not in the fridge. The fridge is not a second choice, I would say it's a third choice. And typically I would not be surprised that in a few years from now, this

long way outside the female body which is artificial insemination and this long stay in concentration can will be considered as not very efficient. It will be much better to make graft of the tubes to repair the difficulty of the tubal incapacity, or to use antibiotics—new antibiotics to prevent special difficulty with the mucosa of the tubes, or find chemicals which will help find why certain couples, although they have normal production of cells, cannot manage to get fertilization, or to get implantation. It's surely some chemical thing which is not yet discovered which will be the real solution. Then I would consider that the extracorporeal fertilization, it's, so to speak, an emergency proposal of medicine on the present stage of medicine, but it's not good treatment. The good treatment is yet to be found in each of the cases. It's not the final answer, so to speak, not at all. That is my feeling, but it's a feeling.

Q. One moment, please. Doctor, I would ask you this question, and I'm going to read it to you so I'll understand how to ask it. It has been stated that once you get to blastomeres and they are unequal in size, that nobody knows for sure why division of these cells might be equal in some conditions and unequal in other conditions. Do we now know why the unequal and equal nature exists?
A. That is a very difficult question. We know that normally, as I said, the stage of three cells is due to inequal division of the first blastomeres, and that seems to be the basic normal phenomenon. But why nature do that it's still to be discovered, but it seem to be, the starting phenomenon. Then I would say that obviously there must be something written in the egg, telling the egg you split in two, then one of the cells split in two, then you can discuss together all three to know what to do, the three cells together. It's not a surprise, it's an obvious phenomenon known for a long time it was not explained at all, which has now found explanation. We know that in any typical chimera, made from different embryos, only three line of cells can manage

to build an imago together. That means that the individualization is at the three cell stage.

Q. Within your knowledge, Doctor, can you tell us what we know and what we can tell about these human beings from three cells forward? What knowledge do we gain and at what rate do we gain it? Do you understand my question?
A. No.

Q. Okay. We have heard testimony that at three weeks you have got this, the nervous system starts at this stage
A. Yeah.

Q. This starts when and it's been confusing, because we have tried to eliminate—we tried to identify body parts, we're thinking in terms, and you come to us with a different perspective. Can you tell us once again what it is we have and how it progresses in development?
A. Well, from the very beginning we have a embryo. We have first a zygote and a two cell embryo and then a three cell embryo and then a four cell embryo, and then eight, and sixteen, and all the power of two. This embryo, growing progressively, is inside the zona pellucida and suddenly at around six days or seven days it begins to "hatch." The zona pellucida is, in fact, the protection, or privacy, so that if they are twins, for example, they will not mix together because each of them is in its own zona pellucida. At the moment the embryo begins to hatch and make trophoblast which will anchor itself on the mucosa, there is already so much commitments we cannot see. There is already so much committed to build the individual that it will not mix with a possible twin. Otherwise, in species in which you have a lot of pups in a litter of five, ten, like in kittens or in dog, if they were not protected, each of them at the beginning in their own plastic bag (in their own zona pellucida), they would not make different animals, they would mix and make a kind of chimera. But when it's so well committed, when all

the cells are so well committed to continue to cooperate with each other, then nature has invented that embryo will hatch and rupture the zona pellucida and begin to anchor on the uterus. The second step, we can describe around twelve days after fertilization; that is the very beginning of the little line which cells begin to draw on the embryo; this little line will progressively become a kind of *gouttiere*—I don't know the word in English—and finally will close itself in a tube, and it will be the beginning of the neural tube. Then well, let's say, what I should say more? I will describe the whole development of the imago, let's say at three weeks, the cardiac tubes will begin to beat, so that the heart is beginning to beat three weeks after fertilization. And progressively you will reach the end of the embryonic period at two months after fertilization. At that moment the little fellow will be just size of my thumb. And it's because of that that all the mothers telling fairy tales to the children are speaking about Tom Thumb story because it's a true story. Therefore, each of us has been a Tom Thumb in the womb of the mother and women have always known that there was a kind of underground country, a kind of vaulted shelter, with a kind of red light and curious noise in which very tiny humans were having a very curious and marvelous life. That is the story of Tom Thumb. Well, after Tom Thumb is visible, that is, two months of age, it has two centimeters and a half from the crown to the rump, and if I had it—if I had him on my fist, you would not see that I have something, but if I was opening my hand you would see the tiny man with hands, with fingers, with toes. Everything is there, the brain is there and will continue to grow. It's from that moment which is two months after fertilization, that we don't call any longer human being embryos, we call them fetuses. And that is very true to change the name just because it tell a very plain evidence: Nobody in the world looking for the first time at a Tom Thumb bag, looking at an embryo of two months of a chimpanzee, of a gorilla, of an orangutan, or of a man,

nobody in the world would make a mistake just looking at him. It's obvious this one is a chimpanzee, this one is an orangutan, this one is gorilla, this one is a man. The reason why we change the name, and we call it fetus, it means only something to be carried because the full form is already present. But the man was there before everybody could tell the difference with a chimp. For example, if we were taking one cell—I would not do that because it's dangerous for the being, but if we were taking one cell of a four cell embryo, it would probably survive and compensate. We know it in mouse. Now, let's take one cell of a chimpanzee embryo, of a human embryo, of a gorilla embryo and give it to one of my students in the Certificate of Cytogenetics in Paris, and if he cannot tell you this one is a human being, this one is a chimpanzee being, this one is a gorilla being, he would fall his exam; it's as simple as that.

Q. When you see the development of three cells
A. Yeah.

Q. And if we used the most intricate computers, let's say, that would be used in our space program, NASA we call it, could those computers be programmed to keep up with what is going on?
A. No, totally not. The amount of information which is inside the zygote, which would if spelled out and put in a computer tell the computer how to calculate what will happen next, this amount of information is that big that nobody can measure it. I have to explain that very simply. You have the two meters of DNA, one coming from father, one coming from mother, that it means ten to the eleven bits of information, just to spell out what is written on this DNA. If you add the subscript that I was talking about methylation, then it will increase this number by ten to the power four or to the power five. Thus, we will go very soon, just for the DNA, at ten to the fifteen. It's an enormous number. To give you an idea, just to print letter by letter all what it is written in the DNA of a fertilized egg, you would

need, writing G, C, T, A, and all the string of symbols, you would need five times the Encyclopedia Britannica just to spell out the DNA, five times Encyclopedia Britannica. But nobody could read it. You could fit it into the computer. But now you would have to take care of all the molecules that are inside the cytoplasm which will recognize the message, which will send a message to the next cell. And to spell out this amount of information which is absolutely necessary, (otherwise no life would be possible), I think you would need a thousand, a million times more bits of information. No computer in the world would have a storage enough Just to fill the amount of data. Now, to tell to the computer the algorithm to use it, nobody knows how to do it. You have to realize that this enormous information which makes a man is enormous compared to the information which makes a computer, because it's a man who has made the computer', it's not the computer which has made the man.
MR. CHRISTENBERRY: You may ask him. I would like to Interject at first if the Court—while it's fresh on the Court's mind, would have any questions of the Doctor. He's used to facing a judge after he's told his side of the story, and sometimes we do that in our system.

THE COURT: I have no questions at this point.

MR. CLIFFORD: Thank you, your Honor.

CROSS EXAMINATION BY MR. CLIFFORD:

Q. *Bonjour*, Dr. Lejeune.
A. *Merci*.

Q. Now that we have exhausted my French, we'll hopefully proceed in English. Let me first thank you very much for being willing to come here to Maryville, Tennessee, to appear in this trial. I believe, in fact, you come at your own expense, is that correct?
A. Uh-huh (affirmative).

Q. Now, please bear with me, Doctor, if you're not familiar with what I may be doing, in France they have civil law and we, as you may know, take our law from the British system, the common law. Please interrupt me if you're not sure where I'm going. Let me ask you this: Have you testified before in an American Court?
A. Yes.

Q. Could you tell me what testimony, what cases you have testified in?
A. Well, in American Court I have testified especially on those questions. It was —I don't remember the Court it was.

Q. Do you remember maybe testifying in 1981 in the state of Maryland?
A. Yeah,

Q. You recall that?
A. Yeah, yeah.

Q. What was that trial about?
A. Well, if I'm well remembering, the trial was about a baby who was inside the womb, a very different case. And if I remember exactly the story because I am not a lawyer, you know, I was not invited giving my opinion about the case, but giving opinion about another question which was whether this baby who could have been, I suppose at that time, some—must have been three months old, was really a human being. It was a very simple question, but it had to be as well answered with the available knowledge at that time.

Q. I believe, Dr. Lejeune, in that case the question was whether or not a woman should be allowed to have an abortion?
A. I think the question was whether the husband should say he did not want the baby to be expelled. That was the question.

Q. And I believe, and correct me, of course, if I'm wrong that in the proof of that case the child had a chromosomatic, chromosome defect which would likely lead
A. No, I don't know that. I've not been aware of that, I have not heard about that. It was not said at the trial, no.

Q. In that case you testified, I believe, that in your opinion the fetus in that case was a human being?
A. It was not my opinion. It was the teaching of all the genetics that I was giving, It's no doubt it's a human being because it cannot be a chimpanzee being, so it's a human being.

Q. And you opposed abortion in that case?
A. I dislike to kill my—a member of my kin, no doubt. And beside that I'm a French Doctor, I have sweared the oath of Hippocrates. Hippocrates four hundred years before Christian era made an oath that, "thou shall not give poison, thou shall not procure abortion." It's very interesting for us doctors because at that time in which slavery was the law, at the time in which the father of the family was allowed to kill a baby at birth, or even later, he founded medicine by preventing new doctors to give poison or to give abortion. That was meaning that does not matter what the size of the patient; a patient is a patient. That is Hippocratic oath.

Q. I believe that perhaps the first commandment is first do no harm?
A. Thou shall not kill, yes, I have heard something about that.

Q. Let me understand what your expertise is. You are obviously an expert in genetics.
A. Yes.

Q. Do you recognize the scientific field of embryology? Do you recognize there is a scientific field called embryology?
A. Oh, yes, no doubt.

Q. Do you claim to be an expert in the field of embryology?
A. I claim to be not entirely ignorant.

Q. But do you offer yourself as an expert in the field of embryology?
A. No, I'm not an expert in the field of embryology by itself.

Q. Let me ask you if you are offering yourself as an expert in the field of psychology?
A. In the case of genetics I would have said yes because I have been so much involved in so many cases that I have learned about human psychology more than I should have in the faculties.

Q. But you, I take it, do not claim to have a degree in the field?
A. No, I have not a degree.

Q. Do you claim to have expertise in computer science?
A. Partly, sir,

Q. Do you claim to have academic credentials in the field of computer science?
A. No, not academy credentials. I have written things which were agreeable to some academicians.

Q. Finally, do you claim any expertise in law?
A. Oh, not. I have some heredity about it, my father was.

Q. You may be more of an expert than you wish you were. But you do not claim any academic training in the law?
A. Oh, no.

Q. Or experience with the law.
A. Experience, yes, a little experience.

Q. Dr. Lejeune, I take it it has been known for quite a considerable length of time that the genetic material that started out in the ovum and the sperm combined, of course, into the zygote?
A. Oh, yes.

Q. How long has that been recognized?
A. It's difficult to tell because fertilization has been discovered by Spallanzani, but he did not know about DNA, he did not know about chromosomes, then it was just the mixing of two cells. It was at the end of the 17th century. You asked me to tell you the whole story of genetics

Q. No, no.
A. I agree, but it will take a month.

Q. Doct[illegible], I'm asking you approximately how long it has been known by the science of genetics that it was the coming together of genetic material, regardless of whether the precise material was known by its nature or not?
A. I would say more than fifty years, going back to the early nineties.

Q. Early nineteen nineties?
A. Nineteen.

Q. 1920's?
A. Earlier than that, Eighteen, nineteen—I cannot explain.

Q. I think we would agree it's been a long time.
A. A long time. Three generations of students.

Q. And I take it at some point it became understood in the field of genetics, that the genetic code or blueprint for the mature entity was contained obviously in that first cell?
A. As I said it was known by inference, the inference was made, but the demonstration was not there.
Q. Of course, often we refer in science to the concept of a theory.
A. Uh-huh (affirmative.)

Q. A theory being, of course, and you correct me if I'm wrong, a proposed explanation of how a system, in this particular case genetics, works, and then we do experiments to see if our theory holds water or whether it needs to go back into the shop?
A. Yeah. I would say model.

Q. Model, yes. Now, in genetics, I would take it, it has been believed on the theoretical level, all of the genetic material, all of the information as you referred to it was in the zygote, that has been believed theoretically for a very long time?
A. No doubt.

Q. And that what you have described to us at such length today has been the working out of the precise mechanism of how that works?
A. In a sense, yes, but it's a little change that previously it was an inference and now we begin to have a demonstration. For a scientist it makes a lot of difference.

Q. Of course. But if I had come to you, Dr. Lejeune, ten years ago, and I had said, please help me with my genetics, Doctor, do you believe that all of the information that's necessary for the development and maturation of a chicken—
A. Yeah.

Q. Is contained in that zygotic cell we first see in the egg—
A. Yeah.

Q. Would you have told me that you believed that?
A. Well, to be perfectly correct, I would say I believe it; now I would say I know it. That's a small difference.
Q. But I take it it would be true that, again, ten years ago had I asked you this question about the chicken that your level of conviction about all that information being in the zygotic cell would have been very high?
A. Yes, pretty.

Q. And certainly if in genetics we had discovered that some information was coming into cells from some other source than the genetic material and having an impact, we would have all been stunned, scientific world would have been stunned?
A. Yeah, yeah.

Q. Now then, you described at great length this morning, the precise nature of the development of embryos as far as the mechanics of the genes and chromosomes and information that is passed from each gamete into that zygote, and you, of course, described it as an incredibly complicated procedure?
A. Uh-huh (affirmative).

Q. I take it that your questions, you were answering specifically about human embryos, zygotes, sperm, ova, but I take it that is also true of chimpanzees, gorillas, mice, they are-in those species it's also a very complicated fascinating complex mechanism?
A. Yes, but not exactly the same mechanism.

Q. Certainly. I think I have read somewhere, and I'm sure if I'm not right you'll correct me, that genetically as far as the chromosomes, as far as the contents of the DNA in the chromosomes, for instance, man, Homo sapiens, and the higher mammals, particularly the gorillas, chimpanzees—help me look for that species.
A. Orangutan.

Q. There is a remarkable similarity?
A. Well, it depends what you remark. You can remark the similarity, or you can remark the differences. And difference is incredibly interesting. I don't know where you want to ask me.

Q. Well, I have heard it said or read that approximately ninety-eight percent of the genetic material that is found in a chimpanzee or gorilla is identical to what may be found in a human being.
A. It has been written, and it has been written by statistical calculation of the DNA but not about the meaning of it. Now, what makes ninety percent similarity in the number of words in two different texts? They can mean something very different by the way the sentence are made. It's what makes the difference between the species.

Q. But there is a similarity in the DNA?
A. Oh, yes, exactly like the similarity in the fact they have two hands like us, not the same thumb, but they have hands, we have feet, but they are the most similar to us, no doubt. It's no surprise that the DNA also has some similarity.

Q. But the same basic process that we observe in human beings we also observe in chimpanzees?
A. Oh, yes.

Q. Mice?
A. Mice, I would not go that far but partly.

Q. Mice have zygotes?
A. Oh, yes, I mean—I want to make clear when we speak about basic mechanism we have to know what we mean by basic. For example, I told you the enormous importance of methylation of the DNA we discovered those years. But, for example, Drosophila does not methylate the DNA.

Q. That's the fruit fly?
A. That's the fruit fly but it's a very complex organism. It's makes a differentiation of cells that makes me believe that with methylation we have unveiled one of the tricks used by nature, but there are other tricks we are still using, we men, that were sufficient to build a Drosophila but would not be sufficient to build the human being. I would not agree that basic mechanism are the same in the whole living system. Surely it's much more complicated to build a human being, to determinate on one cell the wiring of his brain so that he will some day invent machine to help his own brain to understand the law of the universe. There is something peculiar to the human beings compared to others, you know. I will tell you one thing, very simple: I'm traveling a lot, and as far as I can I visit two points which are very important for me when I go in a new town: One is the university and other is the zoological garden. In the university I have often seen very grave professors asking themselves whether after all their children when they were very young were not animals, but I have never seen in a zoological garden a congress of chimpanzees asking themselves whether their children when they are grown up will become universitarians. I feel there is a difference somewhere.

Q. Doctor, I forgot to ask you a couple of questions about your expertise, and please pardon me for having to come back, but I take it from your testimony when Mr. Christenberry was asking you questions that you have not worked in the field of what is called in this country in vitro fertilization?
A. No.

Q. I believe in France there is a different term for that.
A. No, it's called also *fecundation in vitro*.

Q. But you have not been involved any in in vitro fertilization clinics?
A. No.

Q. You have not been asked to advise in vitro fertilization clinics on matters of genetics or anything else?
A. Not directly, but I have advised a lot of my patients who consider whether they should have or not this type of investigation.

Q. I suppose I should ask you this. I understand in vitro fertilization is done in France?
A. Oh, yes.

Q. How long has this procedure been carried out in your country?
A. Well, I think Amanda has been six years, now, six years and a half, she was the first test tube baby in Paris. I think she is six years, seven years maybe.

Q. Let me see, Dr. Lejeune, if I understand the point you are making this morning. It is your belief as a geneticist, that all the information that is necessary to create a human being, a unique individual human being, we could go in and find in a nucleus of a zygote?
A. No, I never said that. In the zygote I would say, not in the nucleus. You need the nucleus and whole cytoplasm. The zygote cannot be reduced to the magnetic tape. We have also to have the tape recorder working,

Q. We can take if we wished on a perhaps philosophical scientific experiment here, we could take a zygote, look at it, look at the DNA, look at the other structures in that one cell and assuming that we had the knowledge to be able to do it, tell everything about that human being?
A. I would say yes, beside accident. which cannot be predicted, but I would say no machine is big enough to put in it this information, it Is purely\hypothetical.

Q. Right.
A. It's not practical.

Q. We're engaging on a philosophical experiment.
A. To be frank and to give you my belief I'm not sure well be any time able to build a machine big enough to do that job. There is no evidence about that.

Q. Dr. Lejeune, then theoretically
A. Otherwise this machine would be a fertilized egg itself.

Q. But if we had such a machine on our philosophical experiment, we could look into the zygote, and we could tell what color hair this person would have?
A. No doubt.

Q. What color eyes this person could have?
A. Yes.

Q. Could we look into the zygote and, either in the structure or chromosome or DNA, and tell what language the person would speak?
A. I don't believe so, sir, because language is a basic phenomenon built in. We could say, in your example, theoretical example, this being will be able to speak, but he will speak Japanese if he is in Tokyo. But we could say conversely with your same system, looking at a chimpanzee first cell, this being will never speak.

Q. Could we look into the zygote, into the genes of the chromosomes, into the DNA structure and tell whether this individual would like the music of Beethoven?
A. Partly, yes, sir, because we could in your hypothesis be sure that he is perfectly normal, and if he is perfectly normal he would like Beethoven.

Q. Dr. Lejeune, do you intend to investigate to find the defective chromosomes for those who do not like Beethoven?
A. No, no, but you were asking me about normality.

Q. Could we look into the zygote, into the chromosomes, DNA, into the balance of the structure, and tell whether this individual would grow up to be a person of liberal or conservative persuasion?
A. Well, even looking at the grown-up I cannot tell that, sir.

Q. Of course, as you realize, Professor Lejeune, I'm trying to make, I guess, a philosophical point, and that is while some information, a great deal obviously of information is contained in that zygote, that there would obviously be things we could not detect with our philosophical machine about the individual when he or she was twenty, forty or sixty?
A. Uh-huh (affirmative).

Q. Dr. Lejeune, let me come I guess to what is the heart of the matter here and the heart of your testimony. You mentioned using the word conception and defining it in two different ways, defining it as the point where a zygote comes into existence and the point where we have a thought, and really would you agree with me, Dr. Lejeune, that what we're concerned about in this case and in the great debate about human life are definitions? How do we define a human being?
A. Oh, yes.

Q. Now, of course, when you define a human being, what we're assuming there is that a human being has certain rights whether God given rights or legal rights?
A. That is not what define a human being.

Q. Of course not. I understand. But I take it and I will ask you directly, Dr, Lejeune: You have referred to the zygote and the embryo as quote 'early human beings.'
A. Yeah.

Q. Do you regard an early human being as having the same moral rights as a later human being such as myself?
A. You have to excuse me, I'm very, very direct. As far as your nature is concerned, I cannot see any difference between the early human being you were and the late human being you are, because in both case, you were and you are a member of our species. What defines a human being is: He belongs to our species. So an early one or a late one has not changed from its species to another species. It belongs to our kin. That is a definition. And I would say very precisely that I have the same respect, no matter the amount of kilograms and no matter the amount of differentiation of tissues. Q Dr. Lejeune, let me make sure I understand what you are telling us, that the zygote should be treated with the same respect as an adult human being?
A. I'm not telling you that because I'm not in a position of knowing that. I'm telling you, he is a human being, and then it Is a Justice who will tell whether this human being has the same rights as the others. If you make difference between human beings, that is, on your own to prove the reasons why you make that difference. But as a geneticist you ask me whether this human being is a human, and I would tell you that because he is a being and being human, he is a human being.

Q. And I take it you would believe from your testimony today that it is morally very wrong to intentionally kill a zygote?
A. I think it's no good, it's killing a member of our species.

Q. And it would be the same as if we were to kill twenty years later the person, human being, that the zygote would become?
A. It's difficult to tell because you ask me a justice question; I'm a biologist.

Q. Now, but those are your beliefs?
A. My belief is that it's no good to kill a member of our kin, very simple belief.

Q. There is not much difference to you between whether it's at the zygote level, the fetus level?
A. There is a great difference as they have not the same age. Some of them are very youthful ones, others are old ones. But it doesn't make for me a great difference, in the true sense of the fact it is discarding a member of my species. It's the only reason why I don't kill people, it's because they are human. Otherwise, some of them—some difficulty in life...

Q. Dr. Lejeune, you, of course, are a scientist, and I'm sure that in the large part, you base your convictions and feelings upon your knowledge of genetics and other sciences. Will you concede, Dr. Lejeune, there are other very distinguished scientists, men who are as learned as you, who have thought and who have access to the same scientific information that you have, who come to a different conclusion?
A. About what?

Q. About the moral rights or moral duty to the zygote.
A. Oh, in that case yes, but not about the fact it's a human being or not.

Q. I understand that.
A. But that's the point.

Q. I understand that. There are even, I believe, individuals in your own country who differ with your view of what ethical duty is owed to the zygote.
A. Well, I think in France we are divided in forty million opinions about that.

Q. But you do recognize there are men in your own country of great learning who differ with your view on the ethics of the embryo and zygotic levels?
A. Oh, that's obvious.

Q. I believe, Dr. Lejeune, in the earlier—or I'd say slightly mid-nineteen eighties, your country set up a commission to study the ethical concerns raised by the technology of in vitro fertilization. Are you aware of the national commission?
A. Well, you can call it a national commission, it's specially appointed by the president of France, so all the people have been nominated by the president. It's a presidential thing. It's not really a national thing. It's called national, but it's not elected so it's not representative at all.

Q. Well, I believe it was called national commission.
A. They have called them national commission, but you have to know they are not representative. They are not elected by bodies.

Q. Were you on that committee?
A. No, and I can tell you why, because I'm a member of the *Academie des Sciences Morales et Politiques*, moral and political sciences, and normally a member of this academy should have been appointed ex officio. Deliberately in the constitution, the by-laws of this committee, our academy was not put on it because they knew that the *Academie des Sciences Morales et Politiques* would appoint me. Just an interesting phenomenon.

Q. So you feel -
A. I don't feel anything about it. It's just a fact. I don't feel anything.

Q. You believe you were intentionally kept off this committee?
A. I believe that our academy was kept off, no doubt.

Q. Since they knew that it would be you that was appointed you were intentionally kept off?
A. That is a scientific hypothesis, not demonstrated.

Q. But you do, I take it, recognize that the members of the national com-mission that were appointed were distinguished persons in their fields?
A. I have never seen somebody in a committee who is not distinguished, Sir.

Q. And regarding those individuals even if you disagree with them, I take it you would recognize their integrity?
A. Case by case.

Q. Case by case.
A. Case by case.

Q. Do you know all the members of the committee?
A. No.

Q. But you would, in general, agree they are persons of integrity and learning?
A. Case by case.

Q. Are you familiar with the report of the national commission?
A. Yes, I have read it.

Q. You have read it?
A. Yes.

Q. The report of your national commission expresses some very grave reservations about the technique we know here as cryopreservation. Are you familiar with that?
A. Uh-huh (affirmative).

Q. Let me ask you this, Dr. Lejeune: Do you share those reservations about cryopreservation?
A. I have many reservations. Probably it's not very good.

Q. We heard testimony from Dr. Shivers, who was the embryologist who worked in this case, that with cryopreservation there was a statistical loss of the frozen embryos in the range of, I believe he said, fifteen to thirty percent.
A. He's a better specialist about this attrition percent than I am.

Q. So that you can expect, therefore, by the rules of statistics if we freeze one hundred pre-embryos, and we come back to thaw them at any point, we know the odds are very, very high we'll only have seventy, seventy-five or eighty?
A. Uh-huh (affirmative).

Q. We knew that before we put them in the frigidaire?
A. Yes.

Q. Would you regard that as an intentional killing of embryos?
A. No, but I would consider that it's making the embryo running a risk, and whether this risk was in the best interest of the embryo or not is an open question. I explain. When we do an intervention in a baby for a heart disease, in some intervention we know that around twenty percent of them will be killed by the intervention. And in this case the

intervention is made only if we know if we don't operate the child will be killed by the disease at ninety-nine percent of probability. Then we say in the real interests of this patient the best for him is to operate even if the operation is still dangerous, the danger is much greater if we don't operate. That is a way you can make indeed some choices in medicine which are dangerous but which are, in fact, the best that you can do in the interest of this particular patient. Now, in the case of an embryo, I am not sure it is in his own interest that this choice is made.

Q. In fact it's made in a choice that as Dr. Shivers and Dr. King testified previously, that it merely gives the woman a better chance since she won't have to go through the stimulated cycle having shots and medication, hormones injected into her, it simply gives her a better chance of becoming pregnant. You're aware of that?
A. I am aware of that.

Q. So in cryopreservation we know that we are going to kill ten, twenty, thirty percent of these early human beings merely so the woman has a better chance of getting pregnant?
A. That would be one of the reservations that I would have, but I dislike you say you kill. It's not killing.

Q. If we were to take the members, the individuals seated in the jury box and I were to have a room I could put them in where we would know that thirty percent of them would come out dead, would you not agree I would be guilty of murder?
A. Well, it depends, sir, because if the room you were talking about were a shelter during a bombing time and if remaining in that room all of them will be dead, but in the shelter some of them will survive, even if thirty percent of them will be dead, you did well. So it depends on the reason why you did it.

Q. What if I did it not to take them out of a position of greater harm but merely for the benefit of some person other than themselves, not one of them but Mr. Palmer?
A. I suppose he would refuse you do it, I'm sure.

Q. You recognize the ethical and moral dilemma I'm raising, of course?
A. No, I don't recognize it, sir.

Q. You don't?
A. No, because you use the word killing. And if you take a embryo which has been frozen and you put him briskly at normal temperature so that he will die, you are killing the embryo. If you are freezing the embryo you are not trying to kill him, if I understand what you have in your mind is to help the embryo surviving so he could be implanted in the womb of the mother. So your technique is not good because you lose part of them, but you are not killing. And I would not say that my colleagues who are freezing embryos are killers. It's not true. Otherwise, maybe it's because I don't understand English, but I would not use the word kill.

Q. The national commission in its report used a term which in English is supernumerary?
A. Yeah.

Q. Referring to supernumerary embryos, referring particularly to cryopreservation, embryos which are not to be used with a particular patient, woman, who has undergone IVF. Are you familiar with that term, first of all?
A. I know that term, and it's a wrong term. Can you tell me a man who is supernumerary?

Q. Maybe just a lawyer.
A. I don't believe that, as a man he is not supernumerary. Maybe—I'm not saying anything.

Q. But that is the term that is used in the report of the national commission?
A. Yes, but it is a very misleading term, exactly the same thing as preembryo. You change the name because you will change your behavior, and I dislike that. I like to call a cat a cat, and a man a man. It's Wendell Holmes who said a man is a man is a man.

Q. And a dog a dog and chicken a chicken?
A. No, but "a man is a man is a man," is a saying in your country.

Q. Well, rather at this point debating whether the term was wise or not, I'm asking if that was the term that was used.
A. Right.

Q. Now, as I think I asked you and you told me awhile ago, the French com-mission did have reservations about the whole process of cryopreservation, because, of course, it leads to the precise problem that we have in this case. Of course, you know that regular IVF the woman is implanted or preembryos- excuse me, the embryos are inserted within forty-eight hours?
A. As soon as you can, yes.

Q. Whereas with a cryopreserved embryo, it might be six months, it might be a year. In fact, I believe that you are aware that the French guidelines provide for a year for the first child, recommend that a cryopreserved embryo should not be saved longer than twelve months for the first child?
A. Could I tell you because you speak about what is said in French that this committee is consultative. It means that what he says as guidelines is for himself.

Q. But these are the guidelines published by the national commission that was appointed by your government
A. It's consultative. It has no law, no force; just an opinion.

Q. But you are aware that the commission recommended one year for the first child?
A. Yes.

Q. And then with an extension of an additional twelve months if a second child was desired?
A. I don't follow you.

Q. One question that was raised in the commission was how long you should keep a cryopreserved embryo?
A. Yes.

Q. Now, and the committee recommended that it should not exceed twelve months without very special circumstances and without a great deal of thought by people concerned with the ethical dilemma of IVF, do you recall that?
A. I know about that, but I don't see the meaning.

Q. I'm just asking you about the report at this point.
A. Yes. Nobody knows from where it was coming, the time of one year. Out of the air?

Q. Now, the French commission recognized that one of the dilemmas that was posed by cryopreservation again was the open ended time, time during which, as in this case, things could change, is that correct?
A. I have to be very precise, I don't know by heart the whole document you are talking about.

Q. I'm not going to ask you to quote it. But let me ask you this: Are you aware that the national commission of France that spoke on this subject recommended that in the case where the project of the couple, that is, the IVF project of this couple is abandoned in the meantime, and that meantime refers to cryopreservation being used or is unfeasible because, for example, of the separation of the couple, the only solution retained by the committee by way

of the least evil consist in the destruction of the embryos with the reservation of the possibility of donation for research"
A. I'm not aware of that at all, sit, because the consultative committee said it would not give any indication because they have not reached any opinion. I don't know what document you are talking about, but the one I have read was not this one. If you talk about this document, the opinions saying that it's better to kill the frozen embryos, it's just in my opinion wrong, I disagree with it.

MR. CLIFFORD: Your Honor, may I approach the witness?

THE COURT: You may. BY MR. CLIFFORD:

Q. Let me show you a page here which unfortunately for me is in French.
A. That's good for me.

Q. And ask if you could read the title of the document?
A. (Reading in French.)

Q. Could you
A. I'll try to make a translation. Advice concerning research on human embryos in vitro and their utilization for medical and scientific purposes.

Q. Could you continue to read the page? If you would rather not—
A. Well, what interest?

Q. Just the headings.
A. Recommendation to the use of in vitro fertilization as answer to infertility— it's very long.

Q. Well, that is, in fact, the report of the national commission, is it not?
A. Well, I'm sorry, sir, but it's not printed. It's something made on a computer. I don't see any important document there because it's—probably it has been a project of it, but it has not been published as a final advice because as I know, what I have heard on television, they said they have not reached an opinion on that. I'm sorry, but it doesn't matter anyway. It's a consultative party.

Q. I'm somewhat surprised by that answer, Dr. Lejeune, because I'm given to understand—you can correct me here—in December of 1986, a committee of distinguished French scientists made their report to the government. The report was started 1983.
A. No, no, there is no final advice given by this body on this particular problem. They have discussed it, and they said we will continue to discuss it. as far as I know.

Q. As far as you know?
A. Uh-huh (affirmative).

Q. You are not familiar with the national commission report?
A. When it is published, yes, I read it, but that is not published matter. I don't see where you want to go with this question.

Q. In fact, Dr. Lejeune, will you agree with me, sir, that there are distinguished, learned men and women in your own country of France who take the view that when a couple separates or is divorced that any embryos that may be in cryopreservation should be discarded or destroyed?
A. That there exists people thinking that, no doubt, because if they say that it's probably because they think it. But it does not prove they're right.

Q. Of course, not. Of course, not. And, of course, I take it because you have your feelings, you would concede that it does not prove that you are right?
A. On that, I would not agree entirely with you.

Q. Okay. All right. Would you agree with me, Dr. Lejeune, that really, of course, we're talking about what will become in this Court a legal question!
A. Yeah, partly.

Q. And that legal question is what quote 'rights,' if any, an embryo should have legally?
A. Disagree with that. I'm not thinking about the rights of the embryos—I'm thinking about the duty of the parents and of society. Duty is a different thing.

Q. Lets talk about duty because that is a word that courts can understand. You believe, in fact, there is a duty, and a strong duty, to bring, or attempt to bring an embryo to term and birth?
A. The embryos have been frozen for that purpose.

Q. I'm not so much talking about the particular seven embryos in this case, but any embryo that's been produced by IVF or in vitro fertilization.
A. It if it has been produced, it has been produced in the view that it could be put somewhere in which it could be developed, that is the womb.

Q. So you would believe that the man has a duty to bring it to life, bring it to birth rather, is that correct?
A. What man?

Q. This man, the man who is the donor of the sperm.
A. Yeah.

Q. That he has a duty, a moral duty to bring it to term?
A. Yes.

Q. And you would believe that the woman has such a duty?
A. I would believe that if she was not feeling having that duty, she would not have accepted the beginning of the process.

Q. Now, you, of course, are best known for your discovery of the chromosome connected with Down's Syndrome?
A. That is long ago.

Q. You have researched since that point other conditions or diseases, abnormal conditions which relate to the chromosomes that are passed on by heredity, is that correct?
A. Yeah.

Q. If I understand what you also told us this morning, it is possible to tell at the zygote level whether
A. Not at the zygote level.

Q. At the embryo level?
A. Yes, and late embryo.

Q. Late embryo level whether or not this early human being will suffer from Downs Syndrome?
A. Oh, yes, yes.

Q. And as
A. In fact, it's essentially for a fetus. It is after two months.

Q. But there is no reason that you know of, I take it that we could not at some point in the not very distant future even make that diagnosis in the embryo level?
A. In some future, might not.

Q. I take it from your testimony, Dr. Lejeune, you would believe that even if the embryo, that early human being, was going to suffer from Down's Syndrome or some other very serious condition or abnormality, that it would still be the duty of the mother and the father to brings it to term?
A. I would say the duty is not to kill, and that duty is universal. And I would say that if by technique I was looking at the chromosomes of' this baby, and I see the chromosomes abnormal, say for example, he has a trisomy twenty-one, I would say that this is the disease. But if I look at the other forty-six chromosomes that are normal I would see the mankind of the baby. And I don't condemn a member of my kin.

Q. You would believe that the donors of that embryo would have a moral imperative, a duty to bring that
A. Not to kill the embryo.

Q. That early being into a later stage of human being?
A. Not to kill him.

Q. Now, let me drop back down to a bit more normal level of questions, Dr. Lejeune. Bear with me. Let's take a embryo in general, just statements that we can make about all embryos that would be true. That there is obviously a genetic contribution both by the woman and by the man?
A. Yes, there is a contribution by the father and by the mother.

Q. By the father and by the mother?
A. Yeah.

Q. And without the contribution of either there would be no embryo?
A. Correct.

Q. So on that sense the contributions of the mother and contribution of the father A, Are both necessary.

Q. Are equal?
A. No, they are not equal. They are different, but they are both necessary.

Q. Both—
A. Necessary, absolutely.

Q. And now let's talk about a particular embryo, early human being, and let's look at this early human being when it's became a later human being. Obviously, as far as the genetic makeup of this particular individual, it might be, in fact, more strongly influenced by the mother's contribution, at least in some areas, or might be more strongly influenced by the father's contribution.
A. Who knows.

Q. Who knows. And, of course, unless we were to examine it, we wouldn't know.
A. Uh-huh (affirmative).

Q. And certainly you are not in this Court saying that women contribute more genetic material?
A. In fact, I'm obliged to say, yes, they contribute more genetic material. For example, all the DNA on the mitochondria is coming from the mother, not from the father. Makes a little difference. It's a fact.

Q. It's a fact?
A. It's a fact.

Q. But it's also a fact without both contributions—
A. They are both necessary, no doubt.

Q. But you are not here today saying, Dr. Lejeune, that the reason, the sole reason that Mrs. Davis should win this case and prevail is because her DNA contribution may have been slightly more than Mr. Davis' DNA contribution?
A. I don't understand your question. I cannot see how you can solve a judicial problem with DNA contributions.

Q. You are saying that it's your opinion that these embryos should be allowed to develop in this young lady because you believe they're early human beings?
A. I do believe they are early human beings, and I have been told that their mother offered them shelter. Who could refuse that?

Q. But not because of DNA contribution?
A. Because they're her own flesh.

Q. Well, they're his own flesh, too, aren't they?
A. Yes.

Q. And obviously he will be their father forever, for the rest of his life if there are children?
A. (Witness nods head in the affirmative).

Q. You will not deny that would have an effect?
A. I would not deny anything.

Q. I take it, Dr. Lejeune, therefore, if you believed that a embryo was not a human being as that term is used in ethical or legal or moral or philosophical or religious way that your view of this case may well be different?
A. Totally. If I was convinced that those early human beings are, in fact, piece of properties, well, property can be discarded, there is no interest for me as a geneticist. But if they are human beings, what they are, then they cannot be considered as property. They need custody.

Q. What it really turns on is what philosophically, ethically, legally that embryo may be. In your mind, sir, you have come to the very firm conviction that the early embryo or that the embryo is a human being, early human being, as you described it?
A. Yes.

Q. And you do recognize in other men's minds, after long and deep thought, learned men, they come to the opposite conclusion you do?
A. No, I don't agree with that.

Q. You don't agree with that?
A. I have not yet seen any scientist coming to the opinion that it is a property. It is what is the case. It's whether they are property that can be discarded, or whether they're human being who must be given to custody. That is it. You ask my question, I answer precisely; I have never heard one of my colleagues— we differ on opinion of many things, but I have never heard one of them telling me or telling to any other that a frozen embryo was the property of somebody, that it could be sold, that it could be destroyed like a property, never. I never heard it.

Q. Just so I understand what you're telling us, I take it, Dr. Lejeune, from your testimony that you would be opposed to abortion?
A. Oh, I dislike to kill anybody. That is very true, sir.

Q. You would believe that abortion should not be legal?
A. That is another point which is different. I think abortion is killing people, and I think in a good jurisdiction would make those killing people become rare. You cannot prevent everything.

Q. I take it, again, your basis of that belief would be that the fetus or embryo is an early human being?
A. Exactly. If it was a tooth, I would not worry about it.

Q. Finally, Dr. Lejeune, I'd like to thank you very much first for coming here to Maryville, Tennessee, to share your scientific and philosophical views with the Court. I hope that you enjoy your stay and that your trip back is enjoyable. I have only one final question for you. Okay? What is this?
A. Well, from here I suppose it's an egg, but I'm not sure.

Q. Let me get a little closer.
A. It looks like an egg.

Q. It's an egg?
A. It looks like.

MR. CLIFFORD: Thank you, Doctor, I thought you were going to tell me it was an early chicken.

THE WITNESS: Oh MR. CLIFFORD: I have no further questions.

THE WITNESS: Your Honor.

THE COURT: You may respond, if you wish.

THE WITNESS: Yes, I would respond to that because I have never pretended that I could see through a shell. I don't know if it's has been fertilized so I cannot know whether it's an early chicken.

BY MR. CLIFFORD:

Q. All right. Let's talk about the difference for a moment, If I had in this hand a live chicken, would you agree with me if I were to take it and squeeze its head that it would feel pain?
A. Oh, probably.

Q. That it will be frightened?
A. Yes.

Q. And it would suffer psychological, if you can use that term with a chicken, stress?
A. I'm not competent in psychology, you told me, and especially not about chickens.

Q. But if I take this egg and assuming it is fertilized—I wouldn't really do this, Jay—but if I were to crush it in my hand, this egg would not feel pain, it would not be aware in the slightest of what was happening to it?
A. Yeah. But it would be still a chicken and only a chicken.

Q. I thought you told me it was an egg?
A. You told me it was a chicken. MR. CLIFFORD: No further questions. (A brief discussion was held off the record.)

CROSS EXAMINATION BY MR. TAYLOR:

Q. Dr. Lejeune, I have just a very few questions. You testified earlier that in the case of freezing human embryos, the temperature is lowered only to, I think, a hundred and eighty or ninety degrees below centigrade, is that correct?
A. Yes, generally.

Q. And because that is not absolute zero there are still certain processes that continue within those embryos?
A. Very slowly.

Q. And because of that, it is your opinion that life or the processes are not suspended completely, and therefore the embryo continues to age or develop, is that right?
A. No, it does not continue to develop, but it can age in the sense of losing some properties because of the agitation of the molecule and not being able to repair it. It's the reason why if you freeze cells, ordinary cells in tissue culture, and if you thaw them, after one month you will get ninety percent groove, after ten years you will get fifty percent, so eventually some of them have died in the process.

Q. Is it then your opinion if these embryos are left in this frozen condition indefinitely, ultimately they will perish?
A. If they were to be protected for a long time, I would put them in liquid hydrogen, but it will cost very much.

Q. If they're in liquid nitrogen which is not absolute zero, is it your opinion that they would ultimately perish?
A. I cannot tell time but ultimately.

Q. Is it your opinion that the ultimate effect of storage in cryopreservation ultimately would have the same effect as destroying them now?
A. In the ultimate, yes, but I dislike to speak about very long time because I'm not sure of what would happen in between. Q Yes, sir. You indicated that you do not object to in vitro fertilization as a process, do you?
A. I do not favor it for theoretical reasons. I guess it's a trick we use now in the present stage of knowledge, but it's not the best answer. If you read the newspape[illegible] seems to be the last word about helping reproduction, and I guess it's a wrong idea. But that is a technical opinion.

Q. Even though it may not be the ultimate solution, the ideal solution, you would concede that many, many infertile couples have been helped by in vitro fertilization, would you not?
A. I would consider some have been helped, but the number that have been helped by other methods is much greater. But some have been helped, no doubt.

Q. Doctor, you indicated that one of the reasons you objected to cryopreservation was because there is a mortality rate, certain percentage of the embryo do not survive the process, is that correct?
A. It's not only that. That is one of the reasons, but it's not the only reason.

Q. Are you aware, Doctor, in a normal cycle, a natural reproductive cycle that as many as sixty percent of the ova produced by a mother undergo actual fertilization? Are you familiar with that particular statistic?
A. No, I don't understand what you mean.

Q. We have been told that as many as sixty percent of the eggs produced by a mother may be actually fertilized, but statistically only about twenty-five actually result in a birth.
A. You mean about the early death of early human beings. Well, it has been a very disputed field. To the best of our knowledge, we can rely on experimental animals because we can look at the number of yellow corpus which develops on the ovary and tells us how many eggs have been laid and look at the litter, for example, in mice or any other animals. It seems that thirty percent of the conceptus die, but that more than sixty percent of conceptus come to birth and to normal-that has been established in many wild animals. Then it seems that the number of early deaths has been overestimated recently in our species. I would guess it around the order of thirty percent. Some of them said sixty percent—I would guess myself it's around closer to thirty than to sixty, but that is

Q. You do recognize
A. A sizable number.

Q. You do recognize, do you not, though, Doctor, that when a man and woman attempt to have a child by normal sexual intercourse, there is a percent of embryo human beings, in your terminology, that are created that never result in a birth; that is a risk they undergo?
A. It's difficult to answer your question because some of those fertilizations are probably abnormal fertilizations that can be early cysts and what we call empty cysts which are probably not really true fertilizations. It is very complex, but I agree with you that the road of life is dangerous, even at the very beginning.

Q. I guess my question is, Doctor, then even in natural intercourse trying to achieve a pregnancy, there are going to be some risks that some of the embryo will not survive just like in vitro fertilization?
A. Yeah.

Q. Finally, Doctor, as I understand your testimony here today, if you were advising his Honor on a solution to this very troublesome problem, your first preference would be that the embryo be returned to the mother, Mrs. Davis, in this case, is that correct?
A. I would go step by step, if you ask me. May I, your Honor?

THE COURT: Yes, you may.

THE WITNESS: I would first say it's not a property so they must not be destroyed. Secondly, they have been put into suspended time in the hope that some day they will be given shelter by their own mother, and their mother offers them shelter. I don't see any reason not to grant it to them and to her.

BY MR. TAYLOR:

Q. Let me take that one step further: If his Honor should decide for some reason that it is not appropriate that Mrs. Davis, the mother, should have these embryo, would you then agree that the second preference, the second best solution would be to donate them to some other couple, some other mother who would bring them into being, or attempt to bring them 'into being?
A. I would agree with that because that would preserve the life of the embryos, but then if you agree with that, you are coming back to the Solomon decision. The true mother is the one who prefer the baby given to another than the baby being killed. Then I would suppose that the justice would be on the side of Solomon.

MR. TAYLOR: We all hope his Honor has the wisdom of Solomon. Thank you, Doctor.

THE COURT: Do you have anything?

MR. CHRISTENBERRY: No, thank you, your Honor.

THE COURT: Any recross? MR. CLIFFORD: No, your Honor.

THE COURT: Dr. Lejeune, you may come down and have a seat over here with Mr. Palmer and Mr. Christenberry. (The witness was excused.)

A Symphony of the
Preborn Child

PART III

The Constitutional Personhood Of The Preborn Child
As Found In The Declaration Of Independence

by
Professor John W. Brabner-Smith

THE REDISCOVERY OF NATURAL LAW

(by Professor John W. Brabner-Smith)

(If a Dedication is necessary for this Rediscovery, it should be to Lord Coke, who temporarily subdued King James [the Bible King], with: "Your Majesty is under no man, save God and the Law." [What Law?] And to Hugo Grotius, the forgotten father of the international law upon which our nation is based: "the laws of nature and of nature's God." As well as to Judge Edward Dumbauld, who, like both of them, has spent much of his life searching for knowledge of Law, and then communicating that knowledge to others.)

Today there is much confusion about "natural law." Some law scholars deny its existence, asserting that the only law is Positive Law, the rules enacted by political governments, sometimes called secular, or the Civil Law. Natural Law is no longer taught in many law schools. Nevertheless, it was made the basis for the Nuremberg war crime trials, and execution of Nazi leaders who planned and waged a war of aggression. A previous Hague Peace Conference decided not to make this a positive law offense. The United States representative argued that the victor would always say that the loser started it.

The Foundation of Nation-States

Our nation, the United States of America, is based upon both natural and divine law. On July 2, 1776, the Second Continental Congress, which was then the government of the united colonies, voted to become independent of Great Britain. That night a great celebration followed. An Act dated two days later, July 4, 1776, created a new international political corporation. This charter set forth its purpose for existence. Jefferson was the principal drafter of this Declaration. He was a member of a committee appointed by Congress for that end, following the motion of Richard Henry Lee of Virginia. Lee requested a resolution, not only for independence, but also for a better form of government, and one that could deal directly with other powers. This draft was designed by Jefferson largely to justify independence to the many colonists still loyal to England. It was materially changed, both by the committee and Congress after the July 2 act of Congress for independence from colonial rule. This Declaration based legal existence upon "the laws of nature and of nature's God," in order for the now united colonies to take a place "among the powers of the earth." This was the foundation of all international states, according to Hugo Grotius, of Holland and France, known as "the Father of International Law." Edward Dumbauld, the legal historian, says that this law of nature "flourished in its purest state" in the time of Abraham.

The western community of nations had accepted this Grotian concept through its monarchs. The latter asserted "the Divine Right of Kings" to rule, having been "ordained" by an official of the state church, as a Viceroy of the Sovereign God. So this new nation-state was also accepted among the great powers. France recognized it as an international state even before the treaty of peace with England. The aid of France against the military might of the British was of prime importance to our new nation.

Animal Natural Law

One confusion concerning "natural law" arises because there are other "natural laws." There is a "natural law" governing man as merely a physical animal. This being is subject to natural forces, and inevitably develops from a unique human embryo to end in death and physical decay. This would logically appear to be a primitive concept of natural law. The recent scientific theory of Evolutionism has helped reintroduce this concept. In education, mid-twentieth century culture produced the "do your own thing, Joe," philosophy. Individual rights were emphasized and social obligations were ignored. Even school books and the nation's prestigious Museum on the Mall popularized a sketch of a crouching baboon gradually standing erect until it becomes a modem man, a brutish concept of the laws of nature.

Secular Natural Law

Then there is the philosophical concept of a "natural law" governing man as an intellectual being. That "law" can be discovered by man's reason. Grotius called these rules of law which rest on reason "the secondary law of nature," but only if there seems to be universal agreement. It presupposes no superior super-natural governing power—no "law above the law"—merely an ever-evolving natural universe. It was the natural law of the Greek Sophists. This is, in effect, the French Enlightenment and its sensual worship of the Goddess of Reason. It is a prostitution of the

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Ed. The word "man" as used herein has its primary dictionary meaning of a human being. "God created man ... male and female created He them."

philosophy of Thomas Acquinas and John Locke. It ignores not only the world of the Spirit, but also the foundation of those scholars upon God's ultimate revelation in man's search for knowledge of the Truth.

The knowledge man seeks, and requires as one of the human species, is how to conduct himself towards others, toward himself, and toward God, his Creator. This is the essence of Natural Law. Man's reason is not reliable to produce this knowledge, and positive law cannot adequately supply it. The increase in crime in the Soviet Union and the United States in the past half century is evidence of the failure of a reliance on human reason alone, even with positive law and a great police force. What is lacking in this theory of Natural Law?

The Sovereign Natural Law

"Our Lord" is acknowledged as sovereign of this nation by dating our laws and Presidential Proclamations "in the year of our Lord" and "A.D." (Anno Domini). The Continental Congress, and every President, from George Washington to George Bush, has, in Inaugural messages, recognized the dependence of our nation upon the blessings of an all-powerful Divine Being.

George Washington closed his first Inaugural Address to the newly elected Congress, in the city of New York, on April 30, 1789: "...resorting once more to the benign Parent of the Human Race in humble supplication that, since He has been pleased to favor the American people with opportunities for delib-erating in perfect tranquility, and dispositions for deciding with unparalleled unanimity on a form of government for the security of their union and the advancement of their happiness, so His divine blessing may be equally con-spicuous in the enlarged views, the temperate consultations, and the wise measures on which the success of this Government must depend."

The address of the Senate in reply referred to the brief history of the nation: When we contemplate the coincidence of circumstances and wond:rful com-bination of causes which gradually prepared the people of this country for inde-pendence; when we contemplate the rise, progress, and termination of the late war, which gave them a name among the nations of the earth, we are with you unavoidably led to acknowledge and adore the Great Arbiter of the Universe, by whom empires rise and fall. A review of the many single instances of divine interposition in favor of this country claims our most pious gratitude..." The primary questions raised by natural law with God as Sovereign is, how does one discover this law, and what is man's place in it? The Congress and the President have recognized the importance of God's law as disclosed in the Bible, for instance, by proclaiming 1983 "the year of the Bible," and the President taking oath of office on the Bible. That book, often referred to as "God's Word" or "God's Law Book," establishes man's dominion and responsibility in the universe, including the environment. Man is created "in the image of God," and is ordained: "...male and female..." "Be fruitful and multiply and fill the earth and subdue it. Rule over...everything that hath the breath of life in it..." (Genesis, chapter 1) In this Book, the natural and divine worlds are clearly separate but complementary. A Sovereign governs under both natural and divine law in this view of Natural Law.

The Same Natural Law Clarified By Grotius

The "natural law" of Grotius and of western civilization is based upon this concept of a universe created and controlled by a supreme supernatural Sovereign, with human beings made in His image (Imago Dei), to live in community (Societatem), tranquilly with fellow men, in order to survive as a distinct species. The Greek Stoics called this "the dominant instinct." This living in community requires rules of conduct and modes of communication.

"This tendency to the conservation of society...which tendency is in agreement with the nature of the human intellect, is the source of 'Jus', or natural law, properly so called." So concludes Grotius. Among principles he mentions which are derived from this Natural Law are: abstaining from what belongs to others; fulfilling promises; reparation of damage done through fault; and recognition of actions deserving punishment. Grotius called it "the Primary Law of Nature."

Giving unintended homage to Grotius, a number of political scientists over the years have seized on one phrase in all of this scholar's writings to justify the secular, materialistic view of natural law. They refer to his remark that certain rules of conduct follow from man's natural need to live in society. Grotius continued, "all this would be true if there were no God, but since there is, we are bound to obey Him." Then Grotius concludes that God has made His will known by the laws set forth in His writings, the Scriptures. There certain "laws" are given consistent with His Natural Law, for instance, the "Ten Commandments." So our Declaration reads, "the Laws of Nature and of Nature's God"—both natural and divine law of God. Later scholars explain that Grotius was questioning in his mind the very nature of natural law: whether, if God created anything we accept by reason, such as "2 + 2 equals 4", or His Natural Laws, could God change this? For all Grotius' life, including his greatest work, the Sixteenth Century "bestseller," The Truth of the Christian Religion, he accepted and proclaimed the God of the Bible as Sovereign of the universe, and the author of Natural Law.

The principal political effort of the rapidly ending Scientific Age has been he attempt "to separate God and state," making the State supreme, and relegating he spiritual world to an unnecessary luxury.

The Natural Law of the New Agers

Multitudes of self-styled New Agers are rebelling against the materialistic age of science with no clear uniform beliefs. Their symbol dove, unlike the Christian dove, which descends from a Sovereign, flies upward. It flies but half-way, a compromise. In general, the laws of nature are not distinct from those of nature's God. For nature, to them, is also god, not complementary but the very same. So, as all human beings are in and of nature, they are also both in and of God, "the ultimate reality." This same amalgam of natural and divine law without a Supreme Sovereign is as ancient in India as the tribes of Israel. Today, Guru now takes a place among society with Priest and Bishop and Prophet throughout most of the western world. The process of meditation is the communion of man's natural mind with man's divine mind. So the New Agers '"natural law" is a material mind seeking to identify with its divine mind; not two distinct kinds of law, natural and divine, which complement each other. No "law above the law," and no Sovereign Lord can exist in this theory of natural law. The man of nature has become that same man's god.

The Natural Law of Islam

The Moslem world celebrates Allah and has a physical natural law. Developed over a thousand years ago, the worldwide community of Islam worships God, Allah, and looks to the Founder, Mahomet, and his revealed Book, the Koran, for both divine and civil law. To the Moslem, there is no difference. Contrary to the New Agers, the distinction between the material world and the world of Allah is definite, but neither has a personal conversation with a loving God. Jesus, the greatest prophet before Mahomet's time, could not also be divine. So the Koran denies that Jesus died on the cross and was resurrected, and became "our Lord." Moreover, Allah is so inscrutable, so far beyond man's comprehension, the prayers to him are part of

a public ritual, a ceremony. The Bible instructs the Christians to pray to God "in a closet" and avoid ostentatious prayer. The Moslem seeks the praise of Allah by "good works," chief of which includes destroying the "enemies" who prevent the spread of Islam. The Christian's Gospel is one primarily of faith not action.

Civil Law
The Law Created By Governments

When a juror recently commented after a case, "it may not be justice but it's the law": by "law" he meant positive or civil law "Justice" would have been Natural Law. The lawyers were not embarrassed, because legal education, for almost a century, has been limited to the study of law as a science, a process. This overlooks the purpose of acquiring knowledge. The concept of Justice as a substantive product, as "a law above the law," gradually disappeared. The courts, called by Lincoln, "Courts of Justice", are now the "Law Courts."

Hugo Grotius was also the father of the philosophy of political science. He showed that Civil Law, the law of the state, is derived from the Natural Law. The latter requires observance of compacts, which is fulfilling agreements. Criminal, property and tort laws are other examples of positive law derived from Natural Law. Although the British legal scholar, Blackstone, in the 18th century, recognized the ultimate power of Parliament to make the civil laws of England, he always asserted that this Natural Law of God was the supreme law of England and of its colonies. Upon that same principle, George Mason and other leading colonial lawyers argued in justification of the legal right to rebel against British colonial government. Its agents were denying to the Colonists their Natural Law rights.

Utility, which recently has been suggested as the source of all Law, is rather an occasion of it. It is also now suggested that a return of the Supreme Court to Natural

Law "will end the recent advances in individual rights" effected by a majority of its justices in recent years. The very purpose of government, under the Natural-Divine law concept of the United States, is to protect and promote individual rights, including those unalienable rights of Life and Liberty and the pursuit of Happiness. This is of the essence of true Natural Law.

Civil Law and Judicial Legislation in the United States

This era of skepticism, scientific method and positive law was, even including the depression years, a bonanza age for the legal profession. The Constitution, as distinguished from the Charter of 1776, is only positive law, the corporation's by-laws. Constitutional questions are raised by lawyers, and decided by members of that profession. For half a century, if they were decisions of a majority of the nine U.S. Supreme Court Justices, they were considered to be The Law of the nation. This same federal agency has effectively overthrown state laws (laws in fields never delegated to the federal government) by its own "interpretation" of a constitutional amendment (the Fourteenth), intended for a very different purpose—to support the abolishment of slavery.

This "judicial legislation" is in direct opposition to the present national constitution, which provides (Article I) that "all legislative power herein delegated is in the Congress..." These federal courts, as with all tribunals of justice, were to have only "judicial power"—the ability to settle a conflict—to bind only those who come before the court in a legitimate dispute (Article III). (Actually, the power of enforcement is in the Executive Department of government.) In the Dred Scott case debates, this "judicial" legislation caused Lincoln to remark that if the Supreme Court's judgment (that the slave, Scott, was property) was immediately considered to be binding on others than Scott and his "owner," our Constitutional system no longer existed.

A century ago in this country probably every state had Equity Courts, a judicial system that had developed in England when the Law Courts became so involved in rules of procedure that justice was forgotten. In Equity Courts the plaintiff's attorney merely set forth certain facts to be true and asked for justice. These courts no longer exist in the U.S. because of "the expense of two legal systems." Their functions were turned over to the still existing law court system, and forgotten.

An even greater break from equity, justice, and natural law, was in the legal profession itself. Under British Colonial government, one who felt wronged by another could ask advice of a Solicitor, an attorney, who would advise whether "to go to court," seek to settle the case, or drop it. The attorney did not benefit by "going to court," for the case would be presented for trial by a Banister, an officer of the Court. That attorney's prime function was to aid the court in arriving at a just decision. His fee had little relation to the wealth of the client, or the value of winning. This system of justice disappeared here after the Revolutionary War, because of lack of lawyers to fill both positions. So the Solicitor also could "go to court," an enticing prospect, and even more so, when, instead of a set fee, the attorney could make his fee "contingent" on the size of victory. The courts of justice became the field for a battle of wits.

Reopening the door to Natural Law is raising the question: why was this legislative power entrusted to a small portion of a profession which was created to be the dispensers of Justice, and only in the narrow field of federally delegated power? In any other land and in any other age, has a profession designed to promote justice within a nation asserted, or been permitted to assume, such political power?

Complementarity

In the Christian culture, which recognizes both a natural and supernatural world, many live only in and for the spiritual world,—the first of the ten commandments—ignoring the problems of the world in which they live. For many others, now including the self-styled "Liberals" of the Christian church, the essence of their faith is love for "the poor" of this world, ignoring the Sovereignty of Our Lord, and the Bible as God's Law. "Our Lord" is of both worlds. Grotius said there are laws of nature and laws of God; they are complementary, and they bind nations as they do individuals. So they became the foundation of our United States of America by the Act of the government of this nation, dated July 4, 1776. It is based upon "the laws of nature and of nature's God." This law is accepted by the legislature of each of the states as their basic law, as well as that of the United States. God's natural laws complement God's laws concerning the spiritual world, both essential for an understanding of this nation-state.

The Separation of Church and State

Free Inquiry, 1991 "spokesperson" in this country for Secularists—the agnostics, atheists and free thinkers—questions whether Secularism will survive in this nation. One comment is on the historic view of Supreme Court Justice Story in his first book on constitutional law. This was his "own private Judgment," that government cannot long exist without an alliance with religion, and Christianity is "indispensable to free government" But in this new age a new Justice, Clarence Thomas does not rely for precedent upon that noted predecessor. He quotes only an anecdote of his mother, who said "when they took God out of the schools, the schools went to hell." The conclusion is that the minority class of Secularists can no longer rely on the federal courts to legislate "rights" which will remove religion from government, as they have done in the past half century.

Conclusion

In this rapidly disappearing age of skepticism and scientific method, many theories of Natural Law have been tested in experiment and found false. It is also obvious that many, who have no understanding of Natural Law, employ the phrase to support a premise they are promoting or denouncing. The "Scientific method" has been enjoyed while ignoring the purpose of science (scientia). That purpose is to increase man's knowledge of the universe, the true Laws of Nature and their source.

JOHN W. BRABNER-SMITH October 1991

WHO IS SOVEREIGN - SCIENCE REBUKES THE LAW PROFESSION

Are Human Beings Persons?

(by Professor John W. Brabner-Smith)

Genetics is the cream of the field of biology. The elite band of Geneticists, in this popular discipline of natural science, appears to be forcing political governments to reconsider the field of Sovereignty—who is truly ruling? Who has the last word in determining definitions? For that is the one who decides the meaning of words in the law that governs each person in the land. Who a "person" is depends upon its definition. Who is this ultimate Sovereign?

The internationally publicized case of the Seven Frozen Embryos, who are residing for a short time in a laboratory in Tennessee, accepts the fact of science that unique human beings come into existence shortly after the sperm enters the ovum (egg). But such human beings are "persons" only when the sovereign political body defines it. "It is a justice question," says the Dean of Geneticists, Dr. Lejeune, "a question of definitions." Who has ultimate sovereignty in the U.S.A.? The temporary majority members of the U.S. Supreme Court? In the Dred Scott slave case, that body decided that Scott could never be a person. The Nazi Party Government similarly decided in the case of Jews. Is the ruling political party supreme? Or the United States Congress? Or the People? Or the States?

Or is it still higher authority to whom our government has appealed in the past? A sovereign specifically identified "in the Year of Our Lord"? To some men of influence, in education and government, this is a Sovereign no longer necessary. This nation has grown to self-sufficient maturity, relegating God to the dwindling "Houses of Worship."

At that moment of human creation, Genetics is resurrecting, in the study of an embryo, that Imago – the Imago Dei – the image of God. This Human Being species is distinguished from all other animal species by a supernatural concept.

Is it true that Science, in the role of Genetics, is forcing a reconstructing of the fields of Law and Politics? Let them speak for themselves and through their own agents, the President and the Congress of the U.S.A.

The United States of America as an International Political Corporation

On July 2, 1776, the American colonies, by Act of their Continental Congress, became independent of Great Britain. By Act dated July 4, 1776, those independent colonies took a place "among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them." Moreover, "these United Colonies are...Free and Independent States...and (that) they have full Power...to do all other Acts and Things which independent states may of right do." John Hancock was then President of this new nation. George Washington was Commander-in-Chief of its military forces by Act of the Continental Congress.

I. Complementarity of Natural and Divine Law in the Law of Nations.

The law governing nations is similar to laws of human beings. It is composed of Civil Law, Divine Law and Natural Law.

(1) Civil Law is the law which a political society. makes for its government. This includes constitutional laws establishing the form of government and laws enacted by government agencies, of whatever form, whether King, Congress, or Municipal legislators.

(2) Natural Law - standards which are impressed upon each human being by one's very nature, such as not to murder or steal. The basic law of human nature is the desire to live together as a society. From this, says Hugo Grotius, the father of International Law, other natural laws derive. Such laws are also of God, since God is the Creator and Sovereign of the natural world.

(3) Divine Law, the law imposed upon individuals by God as the Sovereign Lord of the universe. From Divine Law, as from Natural Law, Unalienable Rights of individuals are derived. These are rights which no government can change. The United States of America is founded on the Declaration of 1776, which bases political existence upon "the Laws of Nature and of Nature's God." This Declaration further asserts that "all men are endowed by their Creator with certain Unalienable Rights, that among them are Life, Liberty, and the pursuit of Happiness. That to secure these Rights, governments are instituted among men..."

Civil Rights, the rights of individuals, are not necessarily unalienable. Civil Rights derived from a Constitution or government agency can be changed. They are actually privileges. One example is a "right" under the constitution of the U.S.S.R. Another example is the embryos in the recent "Frozen Embryo" case. Natural law recognizes that a distinct human being exists in the embryo shortly after conception. Civil law holds that this human being becomes a "person" at differing stages of growth, which depends on definition by a government agency—a state legislature or a Supreme Court majority, or whatever agency is sovereign—accepted by the political society as the final authority. Where Sovereign authority exists in the United States of America is a fundamental question of law. What does the law say? For this we must go beyond the Constitution of 1787, which was enacted to improve our form or government.

II. Foundation, Administration, Sovereignty of the United States of America.

This Continental Congress of 1776 was composed of delegates from the thirteen original colonies. It was succeeded by the Articles of Confederation government, which was "done at Philadelphia in the state of Pennsylvania the ninth Day of July in the Year of Our Lord one Thousand seven Hundred Seventy-Eight, and in the third year of the independence of America." The war, then in progress with England, continued until the Treaty of Peace in 1783.

"In order to form a more perfect union," and for other reasons, a third form of government, to be effective when ratified by the states, was "done in convention by the Unanimous Consent of the States present the Seventeenth Day of September in the year of our Lord one thousand seven hundred and Eighty-seven and of the Independence of the United States of America the Twelfth."

It is customary for nations to recognize the legal sovereign by reference to the date of beginning the reign, as "in the year of Caesar Augustus," or "in the reign of King George III," or "in the year of Our Lord, 1776." George Washington, elected President of the United States under the ratified constitution, gave the first Inaugural Address to the newly elected Congress, in the city of New York, on April 30, 1789, closing with these words: "I shall take my present leave; but not without resorting once more to the benign Parent of the Human Race in humble supplication that, since He has been pleased to favor the American people with opportunities for deliberating in perfect tranquility, and dispositions for deciding with unparalleled unanimity on a form of government for the security of their union and the advancement of their happiness, so His divine blessing may be equally conspicuous in the enlarged views, the temperate consultations, and the wise measures on which the success of this Government must depend."

The address of the Senate in reply referred to the brief history of the nation: "When we contemplate the coincidence of circumstances and wonderful combination of causes which gradually prepared the people of this country for independence; when we contemplate the rise, progress, and termination of the late war, which gave them a name among the nations of the earth, we are with you unavoidably led to acknowledge and adore the Great Arbiter of the Universe, by whom empires rise and fall. A review of the many single instances of divine interposition in favor of this country claims our most pious gratitude; and permit us, sir, to observe that among the great events which have led to the formation and establishment of a Federal Government we esteem your acceptance of the office of President as one of the most propitious and important."

The address of the House of Representatives contained a similar reference to a divine sovereign: "We feel with you the strongest obligations to adore the Invisible Hand which has led the American people through so many difficulties, to cherish a conscious responsibility for the destiny of republican liberty, and to seek the only sure means of preserving and recommending the precious deposit in a system of legislation founded on the principles of an honest policy and directed by the spirit of a diffusive patriotism."

The first Presidential Proclamation under that government was issued for a National Thanksgiving:

> "Whereas it is the duty of all nations to acknowledge the providence of Almighty God, to obey His will, to be grateful for His benefits, and humbly to implore His protection and favor: and "Whereas both Houses of Congress have, by their joint committee, requested me 'to recommend to the people of the United States a day of public thanksgiving and prayer, to be observed by acknowledging with grateful hearts the many and single favors of Almighty God, especially by affording them an opportunity peaceably to establish a form of government for their safety and happiness:'

"Now, therefore, I do recommend and assign Thursday, the 26th of November next, to be devoted by the people of these States to the service of that great and glorious Being who is the beneficent author of all the good that was, that is, or that will be; that we may then all unite in rendering unto Him our sincere and humble thanks for His kind care and protection of the people of this country previous to their becoming a nation; for the single and manifold mercies and the favorable interpositions of His providence in the course and conclusion of the late war; for the great degree of tranquility, union, and plenty which we have been able to establish constitutions of government for our safety and happiness, and particularly the national one now lately instituted; for the civil and religious liberty with which we are blessed, and the means we have of acquiring and diffusing useful knowledge; and, in general, for all the great and various favors which He has been pleased to confer upon us."

"Given under my hand, at the city of New York, the 3rd day of October, A.D. 1789. Go.Washington." (A.D., Anno Domini is the Latin for "in the year of the *Sovereign* or Lord.)

The following year the President issued a Proclamation concerning the Treaty of Peace between the United States and the Creek Nation of Indians: "Given under my hand and the seal of the United States, in the city of New York, the 14th day of August, A.D. 1790, and in the fifteenth year of the Sovereignty and Independence of the United States. Go. Washington. By the President: Th:Jefferson."

In 1792, the President issued a Proclamation offering an award for the apprehension of any one who took part in a raid against the town of the Cherokee Indians in Georgia: "In testimony whereof I have caused the seal of the United States to be affixed to these presents, and signed the same with my hand. Done at the city of Philadelphia, the 12th day of December A.D. 1792, and of the Independence of the

United States the seventeenth. Go. Washington. By the President: Th:Jefferson." Philadelphia was now the Capital.

The first Proclamation of President Adams, was to call for a special session of Congress in Philadelphia to consider foreign relations with France, and for the safety and welfare of the United States, due to the French Revolution: "In testimony whereof I have caused the seal of the United States of America to be affixed to these presents, and signed the same with my hand. Done at the city of Philadelphia, the 25th day of March, A.D. 1797, and of the Independence of the United States of America the twenty-first. John Adams."

In President Adams' fourth annual address, November 22, 1800, he congratulated Congress on its choice of the District of Columbia as the future permanent seat of government: "May this territory be the resident of virtue and happiness! In this city may that piety and virtue, that wisdom and magnanimity, that constancy and self-government, which adorned the great character whose name it bears be forever held in veneration! Here and throughout our country may simple manners, pure morals, and true religion flourish forever!"

Thomas Jefferson's first inaugural address was delivered in Washington, D.C., March 4, 1801. In it, he endeavored to unite the bitter party factions which had first arisen in this nation: "...enlightened by a benign religion, professed, indeed, and practiced in various forms, yet all of them inculcating honesty, truth, temperance, gratitude, and the love of man; acknowledging and adoring an overruling Providence..."

In 1806, Jefferson with James Madison, Secretary of State, issued a Proclamation against marauding French citizens and vessels in New York harbor and elsewhere: "Given at the city of Washington, the 3d day of May, A.D., 1806, and of the Sovereignty and Independence of the United States the thirtieth. TH:Jefferson. By the President: James Madison, Secretary of State.

James Madison succeeded Jefferson as President. His first Inaugural Address, March 4, 1809, closed with this paragraph: "But the source of which I look for the aids which alone can supply my deficiencies is in the well-tried intelligence and virtue of my fellow-citizens, and in the counsels of those representing them in the other departments associated in the care of the national interests. In these my confidence will under every difficulty be best placed, next to that which we have all been encouraged to feel in the guardianship and guidance of that Almighty Being whose power regulates the destiny of nations, whose blessings have been so conspicuously dispensed to this rising Republic, and to whom we are bound to address our devout gratitude for the past, as well as our fervent supplications and best hopes for the future."

Madison's first Proclamation was to endeavor to open American ports closed due to attacks by British ships because of depredations resulting in its war with France. This was: "Given under my hand and the seal of the United States at Washington, the 19th day of April, A.D. 1809, and of the Independence of the United States the thirty-third. James Madison."

When the war of 1812 with Great Britain commenced, Congress requested the President to proclaim a day "to be observed by the people of the United States with religious solemnity as a day of public humiliation and prayer..." Madison set aside August 3, 1812, "for the devout purposes of rendering the Sovereign of the Universe and the Benefactor of Mankind the public homage due to His holy attributes; of acknowledging the transgressions, of seeking His merciful forgiveness and His assistance in the great duties of repentance and amendment, and especially of offering fervent supplications that in the present season of calamity and war He would take the American people under His peculiar care and protection...and, finally, that, turning the hearts of our enemies from violence and injustice which sway their councils against us, He would

hasten a restoration of the blessings of peace. Given at Washington, the 9th day of July, A.D. 1812. James Madison. By the President: James Monroe, Secretary of State."

A similar Proclamation was issued July A.D. 1813 by President Madison. Meanwhile, Madison advised the Congress on May 23rd, that Emperor Alexander of Russia offered to mediate for a peace treaty with Great Britain, and to enter into an agreement to facilitate commerce with us, and that our naval forces had gained victories, and the British army had been seriously defeated at York, Pennsylvania. But a British army continued to advance on Washington, eventually capturing it and the fort protecting Alexandria, and setting fire to the Capital.

On the first day of September, 1814, President Madison issued a Proclamation that the British army was threatening further extended progress. So he exhorted all civilians as well as the military to fully defend their communities.

On December 24, 1814, a treaty of peace with Great Britain was negotiated in Ghent, Holland, which was presented by Madison to Congress on January 18, 1815, and ratified February 16. Upon request of the Congress, the President, on March 4, set aside a day of thanksgiving: "to celebrate the goodness of the Great Disposer of Events and of the Destiny of Nations...and to the same Divine Author of Every Good and Perfect Gift we are indebted for all those privileges and advantages, religious as well as civil, which are so richly enjoyed in this favored land...Given at the city of Washington on the 4th day of March, A.D. 1815, and of the Independence of the United States the thirty-ninth. James Madison."

John Quincy Adams' Inaugural Address, March 4, 1825, commenting on the prosperity of the nation as it approached the 50th anniversary, said a principal policy of his administration was "to discharge with all possible promptitude the national debt...Knowing that except the Lord keep the city the watchman waketh but in vain,' with

fervent supplications for His favor, to His overruling providence I commit with humble but fearless confidence my own fate and the future destinies of my country."

President Andrew Jackson, in his Inaugural Address, four years later, referred to "the management of public revenue," promising to observe "a strict economy ...This I shall aim at the more anxiously both because it will facilitate the extinguishment of the national debt, the unnecessary duration of which is incompatible with real independence, and because it will counteract that tendency to public and private profligacy which a profuse expenditure of money by the Government is but too apt to engender." He closes the address: "And a firm reliance on the goodness of that Power whose providence mercifully protected our national infancy, and has since upheld our liberties in various vicissitudes, encourages me to offer up my ardent supplications that He will continue to make our beloved country the object of His divine care and gracious benediction." When Jackson retired, he left the nation with a surplus of 25 million dollars.

Harry Truman, January 20, 1949, included a phrase for the 1990's in his inauguration: "We believe that all men are created equal because they are created in the image of God." Today, Science, under the leadership of the Geneticist Dr. Jerome Lejeune, is recognizing the Imago Dei in the birth of the human embryo.

Facing danger from the U.S.S.R. and communism, President Truman warned of the threat to "a material well-being, human dignity, and the fight to believe in and worship God...We are moving to build an even stronger structure of international order and justice. Steadfast in our faith in the Almighty, we will advance toward a world where man's freedom is secure...With God's help, the future of mankind will be assured in a world of justice, harmony, and peace."

Dwight Eisenhower's inaugural address, January 20, 1953, started "with a little private prayer of my own...give us, we pray, its power to discern right from wrong so that all my work will be for the good of our beloved country and Thy glory. Amen."

"This faith defines...beyond debate, those gifts of the Creator that are man's inalienable rights, and that make all men equal in His sight...This political change expresses a renewal of faith in the watchfulness of Divine Providence. The enemies of this faith know no god but force...We feel this moral strength because we know that we are not helpless prisoners of history. We are free men...The one capital offense against freedom is a lack of staunch faith. Before all else, we seek...the blessings of Almighty God," he concluded. In his second Inaugural Address, on January 21, 1957, President Eisenhower refers to the people of Russia, "We honor, no less in this divided world...the people of Russia. We do not dread, rather do we welcome, the progress in education and industry. We wish them success in their demands for more intellectual freedom, greater security before their own laws, fuller enjoyment of the rewards of their own toil. For such things come to pass, the more certain will be the coming of that day when our peoples may freely meet in friendship...And so the prayer of our people carries far beyond our own frontiers, to the wide world of our duty and our destiny."

President Ford, sworn in as the 38th President in 1974, reminded us that we have "a government of law and not of men" yet the people rule "under a higher power, by whatever name we honor Him, who ordains not only righteousness, but love; not only justice but mercy."

In the Thanksgiving Day Proclamation of 1983, President Reagan referred to the remarks of President Lincoln's Gettysburg Address and Proclamation, that we are a nation "under God." He further quotes from the Civil War Proclamation—"no human counsel hath devised nor hath

any mortal hand worked out these great things. They are gracious gifts of the Most High God."

In his 1982 Thanksgiving Proclamation, President Reagan expressed his belief that "a divine plan" had set apart "this anointed nation."

The annual National Presidential Prayer Breakfasts, with political leaders from many nations as guests, continue the emphasis on the Sovereignty of "Our Lord" in this political life of the nation, expressed not only by each President, but also by Congressional and military leaders.

In recent acts of Congress and Presidential Proclamations, we continue to find affirmations of a Creator and Guardian Sovereign of the nation. "Throughout our nation's history, Americans have been seeking His help and guidance in preserving them." This is the opening paragraph of a 1989 Proclamation of President George Bush. From the beginning of our nation "the Founding Fathers...believed that all men are created equal, endowed by the Creator with certain unalienable rights," said the President. He quoted Benjamin Franklin at the Constitutional Convention, "if a sparrow cannot fall to the ground without His notice, is it probable that an empire can arise without His aid'?" This appeal of Franklin also contained this often quoted phrase: "except the Lord build the house, they labor in vain who build it."

President Bush concludes, "Since the approval of a joint resolution of Congress each President has continued a tradition that actually dates back to the Continental Congress, which issued the first official Proclamation for a National Day of Prayer on July 17, 1775..." He then follows this precedent. "

In witness whereof, I have hereunto set my hand this seventeenth day of March, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and twentieth."

Recent decisions of a majority of the U.S. Supreme Court Justices have been interpreted as legislative in nature, binding all citizens of our nation, rather than judicial judgments that bind only the parties to the case to one definition of "person" in abortion cases has arisen in federal courts, as it did in the Dred Scott slave case which preceded the Civil War. Is that tribunal the ultimate governmental authority—the final political sovereign in defining political terms?

The first articles of the federal constitution says that "all legislative power... is in the Congress." Lincoln's first inaugural address raised this question. If the Dred Scott and similar decisions of a court are immediately interpreted as legislature in nature, we have subverted the Constitution, which places that power in the elected representatives of the people, said Lincoln. And he continued this political issue in the Lincoln/Douglas debates. Senator Douglas supported the Supreme Court decision. But Lincoln won the Presidency, due to those debates. The Civil War intervened before the reversal of the decision which Lincoln expected. The Fourteenth Amendment, in Lincoln's view, was not necessary. It merely brought the Constitution, our National By-Laws, in conformity with the Charter of 1776.

Returning to history and the incorporation of the nation, in 1776, we find the Congress and the President of the United States of America, continually, through the two centuries of our existence, assert the reality of "our Lord" as Sovereign Creator, Heavenly Father, Provider, and Law-Giver.

This nation was incorporated on July 4, 1776, as an international state, a separate and equal state among other powers." The validity of this action was based upon "the laws of nature and of nature's God." This was the only basis for international recognition at that time. "We hold existence by charter from the great God," the Speaker of the House, John Randolph, explained during a controversy concerning the War of 1812 with England. The government was

succeeded by that under the Articles of Confederation, and then by that of the constitution of 1776. Not only the thirteen original states, all other of the United States, explicitly or implicitly, accepted that Act of July 4, 1776, as their legal basis, thus making both natural and divine laws the positive laws of those political bodies.

"The laws of nature and of nature's God" are best revealed in the Bible. Blackstone's Commentaries, which sets forth the philosophy of government and international statehood of the United States, sums up the basis of political existence of a society. He concludes that God gave to human beings reason, in order to discover His laws of nature and His divine law, but experience shows that our reason is untrustworthy. So He reveals, "the laws of nature and of nature's God" to us in the Scriptures. The first treatise on legal education in the United States considers the Bible as the most important secular law book, "recording a form of government and law originating in the Great Legislator of the universe." (David Hoffman, Course of Legal Education, first edition, 1817.)

As recently as 1983, the Congress and the President, by Proclamation, declared the Bible as the most important and influential book of this nation and declared 1983 as The Year of the Bible. This year, 1990, the Congress unanimously requested the President to proclaim this year as "the International Year of Bible Reading, 1990." This Proclamation asserts: "it was a biblical view of man—one affirming the dignity and worth of the human person, made in the image of our Creator—that inspired the principles upon which the United States is founded." Quoting Presidents Lincoln and Wilson, the Proclamation asserts that the Bible contains "revelations of God's intervention in human history" and that it "transcends the boundaries between nations and languages because it contains a universal message." Here the President refers to "the human person" as the image of God.

In this same year 1990, the President and Congress have followed a custom "that dates back to the Continental Congress which issued the first official proclamation for a National Day of Prayer on July 12, 1776." President Bush followed Public Law 100-307, setting aside the first Thursday in May as "a National Day of Prayer," to "dedicate this nation once more to the protection of Divine Providence..."

In view of this constant reaffirmation of the Congress and the President concerning the Sovereignty of God and the wisdom and political basis of "the laws of nature and of nature's God" being complementary, decision of the judicial system which appear to separate public school education from Biblical literature and divine worship could have the same fate as the Dred Scott case. Is a Civil War and a Fourteenth Amendment to the Constitution again necessary? Dissatisfaction with public school education is not a sectional divided issue. Those who prefer that ultimate sovereignty should reside in the Supreme Court of this nation should realize that such a supremacy depends upon popularity. Thrusting itself into highly controversial public issues is an unnecessary hazard for any political agency which has not the executive power of enforcement. That power our Constitution places in the President. The President takes an oath to support the Constitution, not the decision of that divided judicial body, if it subverts the legislative power of the Congress or of an authorized state legislature. It is true that a faction of the Senate repudiated the President's nomination of Judge Robert Bork to the Supreme Court on this same issue. The Bork case is still alive. Nor is a Civil War or amendment to the Constitution any more necessary to define "person," when the question of Sovereignty is settled.

In conclusion, the people of the United States, through its elected President and Congress, ever since incorporation as an international state under the Charter of

July 4, 1776, have recognized both secular and divine sovereignty in God as law-giver, "the laws of nature's God." Therefore, the ultimate definition of "person" is revealed in His book of law, the Scriptures.

John W. Brabner-Smith Washington, D.C.

For Immediate Release
Office of the Press Secretary
April 10, 2002

Remarks by the President on
Human Cloning Legislation The East Room
1:18 P.M. EDT

THE PRESIDENT: Well, thank you all so very much for coming to the White House. It's my honor to welcome you to the people's house.

I particularly want to honor three folks who I had the honor of meeting earlier: Joni Tada, Jim Kelly and Steve McDonald. I want to thank you for your courage, I want to thank you for your wisdom, I want to thank you for your extraordinary perseverence and faith. They have triumphed in the face of physical disability and share a deep commitment to medicine that is practiced ethically and humanely.

All of us here today believe in the promise of modern medicine. We're hopeful about where science may take us. And we're also here because we believe in the principles of ethical medicine.

As we seek to improve human life, we must always preserve human dignity. (Applause.) And therefore, we must prevent human cloning by stopping it before it starts. (Applause.)

I want to welcome Tommy Thompson, who is the Secretary of Health and Human Services, a man who is doing a fine job for America. (Applause.) I want to thank members from the United States Congress, members from both political parties who are here. I particularly want to thank Senator Brownback and Senator Landrieu for sponsoring a bill about which I'm going to speak. (Applause.)

As well, we've got Senator Frist and Senator Bond and Senator Hutchinson and Senator Santorum and Congressman Weldon, Stupak, and eventually Smith and Kerns. They just don't realize -- (applause) -- thank you all for coming -- they seem to have forgotten we start things on time here in the White House. (Laughter.)

We live in a time of tremendous medical progress. A little more than a year ago, scientists first cracked the human genetic code -- one of the most important advances in scientific history. Already, scientists are developing new diagnostic tools so that each of us can know our risk of disease and act to prevent them.

One day soon, precise therapies will be custom made for our own genetic makeup. We're on the threshold of historic breakthroughs against AIDS and Alzheimer's Disease and cancer and diabetes and heart disease and Parkinson's Disease. And that's incredibly positive.

Our age may be known to history as the age of genetic medicine, a time when many of the most feared illnesses were overcome.

Our age must also be defined by the care and restraint and responsibility with which we take up these new scientific powers.

Advances in biomedical technology must never come at the expense of human conscience. (Applause.) As we seek what is possible, we must always ask what is right, and we must not forget that even the most noble ends do not justify any means. (Applause.)

Science has set before us decisions of immense consequence. We can pursue medical research with a clear sense of moral purpose or we can travel without an ethical compass into a world we could live to regret. Science now presses forward the issue of human cloning. How we answer the question of human cloning will place us on one path or the other.

Human cloning is the laboratory production of individuals who are genetically identical to another human being. Cloning is achieved by putting the genetic material from a donor into a woman's egg, which has had its nucleus removed. As a result, the new or cloned embryo is an identical copy of only the donor. Human cloning has moved from science fiction into science.

One biotech company has already began producing embryonic human clones for research purposes. Chinese scientists have derived stem cells from cloned embryos created by combining human DNA and rabbit eggs. Others have announced plans to produce cloned children, despite the fact that laboratory cloning of animals has lead to spontaneous abortions and terrible, terrible abnormalities.

Human cloning is deeply troubling to me, and to most Americans. Life is a creation, not a commodity. (Applause.) Our children are gifts to be loved and protected, not products to be designed and manufactured. Allowing cloning would be taking a significant step toward a society in which human beings are grown for spare body parts, and children are engineered to custom specifications; and that's not acceptable.

In the current debate over human cloning, two terms are being used: reproductive cloning and research cloning. Reproductive cloning involves creating a cloned embryo and implanting it into a woman with the goal of creating a child. Fortunately, nearly every American agrees that this practice should be banned. Research cloning, on the other hand, involves the creation of cloned human embryos which are then destroyed to derive stem cells.

I believe all human cloning is wrong, and both forms of cloning ought to be banned, for the following reasons. First, anything other than a total ban on human cloning would be unethical. Research cloning would contradict the most fundamental principle of medical ethics, that no human life should be exploited or extinguished for the benefit of another. (Applause.)

Yet a law permitting research cloning, while forbidding the birth of a cloned child, would require the destruction of nascent human life. Secondly, anything other than a total ban on human cloning would be virtually impossible to enforce. Cloned human embryos created for research would be widely available in laboratories and embryo farms. Once cloned embryos were available, implantation would take place. Even the tightest regulations and strict policing would not prevent or detect the birth of cloned babies.

Third, the benefits of research cloning are highly speculative. Advocates of research cloning argue that stem cells obtained from cloned embryos would be injected into a genetically identical individual without risk of tissue rejection. But there is evidence, based on animal studies, that cells derived from cloned embryos may indeed be rejected.

Yet even if research cloning were medically effective, every person who wanted to benefit would need an embryonic clone of his or her own, to provide the designer tissues. This would create a massive national market for eggs and egg donors, and exploitation of women's bodies that we cannot and must not allow. (Applause.)

I stand firm in my opposition to human cloning. And at the same time, we will pursue other promising and ethical ways to relieve suffering through biotechnology. This year for the first time, federal dollars will go towards supporting human embryonic stem cell research consistent with the ethical guidelines I announced last August.

The National Institutes of Health is also funding a broad range of animal and human adult stem cell research. Adult stem cells which do not require the destruction of human embryos and which yield tissues which can be transplanted without rejection are more versatile that originally thought.